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Ideological Exile and the Phenomenology of Authority

by Joel Davis

Thought without presupposition is impossible, a thinker gains agency not by eliminating presuppositions (which if pursued to the end would ultimately eliminate thought itself) but by delimiting their necessity. We restrict our agency as thinkers when we obscure the contingency of a presupposition, enclosing our thought within a world in which it reigns. Opening our thought onto its potential to escape this enclosure is the fundamental purpose of theory. Of course most "theory" fails to realize this purpose, but instead performs the role of masquerading ideology with rationalizations which conceal the possibility to think differently. The task of this essay is to reveal a horizon beyond a rather subtle

ideological trap contemporary political thought so often falls into, *sociological functionalism*.

Sociological Functionalism is the presupposition that society can be best understood a system and is therefore descriptively reducible to a nexus of functions. In sociology, "conflict theorists" are supposedly the main opponents of the so called "functionalists", but conflict theory can still be said to be functionalist in the sense that conflict is itself a function they alledge the system to be performing. Thinking of society as a system (whether it is collaborative or conflictious) has become so pervasive in political thinking that very rarely do you encounter anyone questioning whether the notion of society is reducible to the notion of systematicity. This goes far beyond the discipline we name "sociology", it permeates all contemporary political theory. But what if society is something more than a system? How would we know if we presuppose that it isn't uncritically?

Of course, we so commonly presuppose that society is a system for good reason. How else would one model society if not as a system? How could one model anything as anything but a system? The very act of modelling presupposes systematicity, to construct a non-systematic model of something would be an absurdity. We must ask ourselves then, why do we need to model society? Why would our model of society be the highest authority on what it is? In the act of describing society, we prescribe how it should be understood. In other words, the description of society prescribes the context within which all political decisions are made. The modeller of society then with such subtlety that he usually doesn't even himself notice, places himself in authority over the political order by delimiting its possibilities. Hence the form by which all sociological functionalisms are applied in political critique is an explanation of the incompatibility of a political authority's self-rationalization with arguments for a particular sociological description.

In proclaiming that society must be described differently, a political rationalization which conforms to this difference is demanded. How the political is rationalized is vital to its actual functioning precisely because the political order is made up of a series of roles which apply these rationalizations to concrete situations. These roles are in turn governed by roles which review the correctness of these applications, this is basically what a legal system is and how bureaucratic hierarchies work. The sociological description implicit in institutionalized political

rationality then is not neutral, it is *enforced*, this imposition literally defines society's self-relation through its political institutions. Institutionalized thinking about society as a system therefore imposes this very systematicity upon it. This is profoundly important to recognize because the delusion of sociological modelling is that we are merely "describing" society when we engage in it, but we aren't. We are commanding it to restructure itself to fit into our model. When a sociological model becomes implied by political institutions in their self-rationalization, this model does not simply describe these institutions, it rules them.

There are two fundamental modes of sociological function; collaboration and conflict. Both presuppose survival. Collaboration, the survival of the society as a holistic unit. Conflict, the survival of one part of the society. Of course sometimes conflict is key to collaboration, it can be seen as necessary to the survival of the whole to protect parts of society against the interests of other parts of society. It can also be seen as necessary to stage controlled conflict (competition) within society to facilitate the demonstration, selection and reward of functions performed to the benefit of society's survival. So why do I have a problem with this 'sociological functionalism' thing? This all seems pretty reasonable doesn't it? In short the problem I see can be distilled to the question of why we must assume that 'survival' is the only purpose served by society. Why is society trying to survive? Survive to do what exactly? Are conflict and collaboration the only things society ever does, or are these merely the two modes by which it survives?

We can't answer such questions of the purpose of survival within sociological functionalism. This is because the very notion of function *presupposes* a purpose. Purpose cannot itself be a function, functions have purposes. So we can never derive a purpose for society from a model of society. This is why the only purpose for society that sociological functionalism can come up with is the tautological assumption that society must keep functioning (surviving). Sociological functionalism then in its application, is the institutionalized denial that society serves a purpose. Placing a model of society in authority over a society will make that society nihilistic. It will make its political system incapable of serving any purpose beyond its own survival, in other words power for the sake of power. Conflict and collaboration are the means of society, to posit them also as its ends is to deny that society has any.

Of course, explicit nihilism isn't a particularly functional means of running a political system. Rationalizing and motivating political action generally requires more than the mere proclamation that we live in a society. Political discourse within a nihilistic paradigm incapable of affirming anything but "survival" has no option then but to engage in conflict analysis. Politics under a nihilistic backdrop can only be understood in defensive terms. *The survival of Group X is under threat, Group Y is responsible.* This is true even for self-proclaimed "individualists" who reject "collectivism", as their primary concern is that these individuals are threatened by those pesky collectivists. In all cases the purpose of society is either the oppression of one group by another or their liberation. Enemies meet in reciprocal belief that they are the liberators and their opponents are the oppressors. Liberated for what exactly? For the survival of the group? Why must it survive? Only an traitor would ask such a question.

Within the paradigm of sociological functionalism then, the political can be understood only through the binary of domination/liberation. Such a rationalization for pursuing liberation (or domination, if one dares to make this explicit) can only be understood in negative terms. We can only oppose domination or liberation, we cannot affirm either in themselves for we are trapped in nihilism. We are ruled by an intellectual model which infinitely recurses in self-referential presupposition. This abstract vortex alienates us from the possibility of encountering any authority which transcends this idolatrous act of worshipping our self-enclosure in its denial. The act of subordinating society to our model subordinates us to its meaninglessness. In a society where authority has no meaning, power can only be grasped through acts which conceal it. Delusions of liberation are cultivated by our sorcerer ("intellectual") elite as the means of this subtle domination. The denial of an authority which supervenes upon the projection of a model by the intellect upon society rendered this inevitable.

So, what is the solution? How do we approach society without projecting systematicity upon it, without self-systematizing society in service of its purposeless domination by power incapable of acting as a genuine *authority*? What posture can be counterposed to the modeller? How can we transcend systematic thinking and receive authority's significance without projecting a model which obstructs its revelation? If society has a meaning, if a genuine authority exists, it must be making itself available to us somehow. The act of modelling itself would have to be an

act which denies this availability, it would have to be an alienation from a more fundamental mode of perception within which authority's significance is apparent.

To take the position of modeller as our foundational relation to society is to grant oneself the position of subject in implied ontological priority to society as its object. Of course we are modelling society from *within* society, so this "subjective" apprehension of it would necessarily (yet absurdly) be both a product of society and somehow paradoxically also be capable of perceiving it from an exterior position as object. Of course if society is an object, its analysis of itself therefore is a product of what it analyses, a circularity. How the hell are we perceiving society then? Clearly it exists, we're in it right now! Either society is an illusion, or our perception of it must be prior to our taking up of the position 'subject' and our projection upon it of the notion 'object'.

The way out of this confusion is the way out of the subject-object (Cartesian) distinction, a path that was worked out by the tradition of Phenomenology and fully realized in Merleau-Ponty's critique of Cartesian Dualism (a metaphysical disease which infected almost all of Western Civilization's subsequent grand theorists). A key feature of this critique is the transcendental roles of significance and intentionality in the perceptual phenomenon. Merleau-Ponty points out that for a figure to stand out in perception from its background as a thing, we must already sense a significance within it. This sense of significance is the basis of our intentionality to *look for the object*. So, the object in perception is not the cause but the product of our directedness toward significance.

This directedness is not "subjectivity", for it is not self-generated but drawn into the thing by its significance. This significance is always already there, it cannot be generated by the subject or the object but is the basis upon which either could be constructed. Without being subjected to a sense of significance there is nothing to make an object stand out, and with no object to be subjected to there can be no subject. Therefore the subject and object cannot be alienated from one other, or come prior to one another. The perceiver and the thing perceived are co-extensive aspects of any perception, neither generate perception but are both generated by the significance of the world-horizon within which perception occurs.

Phenomenologically then, perception is a direction, an intention, *not* a function. This means we don't have to perceive society as a system, as a mere set of functions. Instead we can see society as a horizon of intentions aiming at revelations of significance, as modes of reverence and perversion, of affirmation and denial. The difference between authority and power is this difference between reverence and perversion. Authority can only be given, whereas power is always taken. But how do we distinguish the given from the taken? In this perversity we call modernity it seems like all is taken and nothing is given, but from who and how was it taken? Authority must first have been given before power was taken, for otherwise it never existed and there was nothing to take.

Obviously according to liberalism, authority must *given* by the people, any other form of government would be an illegitimate *taking* of power. Authoritarianism therefore is the supposedly great evil which liberalism negates due to its regard for the democratic process. But where did "the people" get the right to grant authority from? Themselves apparently, at least according to liberalism. However, in order for liberalism to make this determination it must presuppose a *model of society* which accounts for this. This implies a model within which authority is fundamentally generated out of participation in the formal practice of democracy itself. This social-ontological privileging of democratic practice implies that political meaning can itself be conjured entirely within each individual's acts of deliberation. These acts must be denied object-characteristics in themselves, they must emerge out of pure *void*. As if the act of deliberation is itself the foundation, prior to it can come nothing, for otherwise this act of deliberation would be subordinated to a more fundamental process which determines it.

This notion of deliberation within a void as social-ontological foundation implies the aforementioned Cartesian schema of subject and object. Liberalism requires the subject to function as the spontaneous ground of authority's generation, but this subject can therefore be literally nothing unto itself. To reprise my earlier argument, there can be no subject without an object, and no subject-object relation without a sense of significance already being intended. The subject is nothing unto itself because it is nothing in itself, distinguishing it and granting it ontological priority is profoundly incoherent. To be subjected to political deliberation and democratic practices is to find oneself immersed within a world of always already existing significance. In other words,

anything significant that we could see in the political we discover, it was already there before we deliberated it and without regard to our "consent". The significance of the political then is *not given by the people, but given to the people*.

Liberalism then, in its denial of the legitimacy of all assertions of this significance which it determines the people have not consented to, instructs the people to take power from what has already been given. For if it was given by anything but "the people" themselves, it would be "authoritarianism" and therefore bad, by definition. Of course, "the people" aren't capable of wielding this power which they take, for they don't even realize that they are taking it. According to liberalism of course, "the people" don't take power, they already have it! The role of "the people" under liberalism is to give power to the State, and so long as the State gives the people the impression that they are giving it its power, it has the right to do what it wants. (on the people's behalf, of course!)

Deluded by Liberal sorcery, "the people" don't even realize they are taking power under pretences that offer them no capacity to do anything with it but grant it to the State. So in reality the people aren't really taking anything, the State takes power and then casts the spell of liberalism to justify its nihilistic denial of any higher authority or non-arbitrary meaning to its actions. Democratic consent is an illusion crafted to seduce the State's subjects into denying the possibility of meaningful authority, inducing the nihilism necessary for power for power's sake to reign unchallenged. But it doesn't have to be like this, it wasn't always like this. For starters I must point out that prior to the emergence of Machiavellian absolutism and its concealment by liberal sorcery, our civilization held an extremely different notion of how and from where authority is given.

"Let every soul be subject to higher powers: for there is no power but from God: and those that are, are ordained of God."
- Romans 13:1

Through the embodiment of the Divine in Jesus Christ and his founding of the Church, a means was given for the successors of Christ's apostles to ordain political authorities. Divinely ordained, Monarchical authority was embedded in the Christian tradition only within which did it have meaning, as symbolized by the crucifix which adorned the sceptre. Authority must be given to be genuine, for if it is taken it becomes mere power, and precisely this way and no other was it given to us. Here then

in the historical process by which the State rebelled against Divine ordination is where power was taken, and only through a deep historical and theological examination of this rebellion will we discover the means by which repentance is possible. The only alternative is the hell of power for power's sake, our spiritual degradation by ideological sorcery, the State liberated by nihilism to do whatever the fuck it wants. The meaning of the political must have already been given to us, otherwise it doesn't exist. If it wasn't given to us by Jesus Christ, then who?

"But knowing that man is not justified by the works of the law, but by the faith of Jesus Christ; we also believe in Christ Jesus, that we may be justified by the faith of Christ, and not by the works of the law: because by the works of the law no flesh shall be justified." - Galatians 2:16

Authority cannot be generated from a model or given by deliberation, as I have established they both implicitly deny that authority can be given in their circularity. Either power is taken or through faith it is given. Within the secular modernist worldview, the only thing that can be done is to take power from those who have taken it, but this power can have no real meaning or purpose. The significance of authority must be given, it cannot be modelled or systematized, it cannot be generated through the strategic application of analytic methodologies. It must already exist. Its compulsion must be discovered through revelation. This is was concretely embodied in Christendom, so the question is, if not Christ then how?

If there is another way, write me a paper about it and I'll publish it in the next issue of this journal. Otherwise if we just decide to be nihilists, the task before us is to try to out-sociopath an elite with a brutally massive headstart on us on every conceivable material metric. Even if we were to win, what would be the point? To survive? Survive as what exactly? Power for power's sake but not ours, we wouldn't have one! Can you really take power, or does power take you?

The only way to beat "the system" is to become non-systematic, to discover a genuine authority revealed by faith which cracks through the matrix.

Blackpill or Christpill, pick one.

Communism and the Developmental State

by Chris Bond

A major problem we now have when attempting to understand political thought outside of the Anglo-American liberal tradition is that all of it has been subject to extreme levels of distortion. Obviously these other systems of thought have been approached as enemies by purveyors of liberal thought, and as a result propaganda dominates interpretation. For any serious student of political theory this must be taken into account, and these alternative systems of thought must be approached from a rational and level headed analytical perspective. In this vein, I wish to present the work of Theda Skocpol as a means of gaining less biased insight into "Marxist" revolutions and regimes during the 20th Century.

In her work 'Social Revolutions', Skocpol provides an analysis of the three major revolutions of the modern world; the French, Russian and Chinese. Skocpol approaches these events through a Marxist lens, but what makes the analysis compelling is the unorthodox recognition it offers to the state as a political rather than merely economic entity. This recognition of the political interests of the state is customarily missing in classical Marxist analysis. The state is no longer solely a machine of class oppression, but is also in possession of a set of imperatives driven by geopolitical conflict. This forces Skocpol to go beyond Marxism, as reducing geopolitical concerns to class conflict it is an untenable position to maintain when forced to confront historical reality. As a result, her analysis of the Russian and Chinese experiences with "Communism" reveals the actions of their respective regimes were driven more by the strategic requirements of centralizing state power than by ideology.

Beginning with the Soviets, one the best ways in which we can reassess their actions would be to focus on the issue of land reform, and more specifically the disastrous land collectivization which occurred in the

1920s and 30s. References to kulaks and kulakisation are infamous in discourse critical of the USSR, a process in which the Soviet government specifically targeted a class of farmers labeled as kulaks and declared them class enemies. They were attacked, they had their lands confiscated, and they suffered starvation or deportation. The problem with this narrative is that it is both true and also completely false, and the misleading nature of this narrative can be laid at the feet of the Soviets themselves in the first instance, and then later at the feet of anti-communists. There was a 'kulak' class and they were persecuted, but what is being hidden here by both the soviets and the western anti-communists, is that the kulaks made up a minority of peasant farmers and were not uniquely subject to persecution in this manner. In fact the entire peasantry was subjected to this terror, so to understand how exceptionally misleading this kulak narrative is we need to step back in time briefly and look at the peasant class's development prior to the Russian Revolution.

Prior to being peasants, the peasants were serfs, an institution brought into its mature form in the legal declaration of the Sobornoye Ulozhenie of 1649 enacted by Tsar Alexis. This legal document both implemented strict controls on the movement of this class of people and mandated the enrolment of the nobility in the Tsar's armies. This seems to have been basically a bargain between the nobility and the Tsar. Serfdom was subsequently abolished with the arrival of emancipation led by Tsar Alexander II in 1861 in the wake of the Crimean War debacle, the purpose of which seems to have been to better integrate the peasant class into the mass armies of the time. The key point to note here is that serfdom was introduced to enroll the nobility in the army, and it was repealed to enroll the peasantry in the army. This demonstrates land reform in Russia to be intimately tied to the military and geopolitical requirements of government. It would therefore follow that one could assume that further land reform would be subject to the same dynamic, which is what Skocpol argues is the case with the Soviets and their actions.

One of the major problems which faced both the Soviets and the Tsar before them was that as part of these reforms which emancipated the serfdom, political influence on a local level shifted from the nobility and towards local political centers in the shape of village 'Mirs'. These communal centers of organization held title to the arable land of the area they presided over, and had the right to allot this land to the members of the community under the Mir as it saw fit. This process was

not done as an alienation of the land, but was instead a system by which different members were allotted farmland as per their need, and this land would regularly be reallocated as per this need. Outright ownership of land by individuals, such as the kulaks, was not the normal state of affairs and this form of ownership seems to have originated from the Stolypin reforms. These reforms were an attempt to break up the Mirs by encouraging private ownership so as to both increase the productivity of this sector and to assert political control by the central government in the light of the 1905 Russian Revolution.

Following the collapse of the Russia armies in the wake of defeat in World War 1, the peasant conscripts that made up these armies dispersed to the villages from which they had originally come, only they did so now in possession of rifles. It was these Mirs, now augmented by armed men, that formed the backbone of the Russian revolution as they revolted en masse just as they had in 1905. The peasants appropriated the remaining noble land which had not been dispersed in the emancipation process, they also took a great deal of land that the kulaks had obtained from the Stolypin reforms. This land was put back in collective control. The significance of this is that it shows how misleading the kulak narrative is because it conveniently leaves out the peasant segment of the population that formed the vast majority of this class. These peasants themselves were highly communistic and conservative – capitalism was a new phenomenon that the tsar was trying to force upon them, and they rejected it.

When we move forward to the consolidation of the Soviet regime in the 20s and 30s, we find that this collectivized Mir structure was still firmly in place. The Soviets, being an urban based movement, had basically little to no influence in the countryside and this created significant problems. Grain prices dropped so low that these Mir largely withdrew from the monetary system by virtue of refusing to market grain at the price asked at the time. This can be seen when one notes that according to Skocpol less grain was marketed in the 1920s than before 1914 because of this withholding of grain by the Mirs, and often a refusal to even plant the crop in the first place - farmers in non-capitalist environments tend not to grow crops unless they need to. For a state in the process of trying to jump start industrialization due to its precarious geopolitical situation (being flanked by German and Japanese industrial powerhouses) this was obviously a major issue. Two general responses to this were apparently considered by the Soviets. The first option was to

try and encourage the remonetization of these peasants by producing greater quantities of cheap consumer goods. The second option was to simply send in state agents to collectivize the peasants under state supervised farming organizations which became known as *kolkhozes*, and to then force them to farm and sell the crops. For multiple reasons the second option was chosen with poor results to say the least.

What should interest us at this point is that not only did the Soviets consider encouraging the peasants to market their grain with consumer incentivization, but that the targets of this state based collectivization were the entire peasant class, not merely the kulaks. Granted the Soviets made a great deal of noise regarding the kulaks being class enemies, but in reality they were also targeting the peasants acting in a communal way. This despite the obvious truth that one would conclude from reading communist literature that this method of organizing production was precisely what communism was supposed to be aiming to achieve. This was why they made such a big issue of singling out the kulaks because their actions were in many ways difficult to reconcile with communist ideology, and so this claim of attacking class enemies acted as a cover for what was really happening. This seems to have led to the term kulak being expanded to cover any peasant who opposed the *State* collectivization, which would mean the Mir collectivized peasant would be labelled "kulaks". The Soviet state was acting as a state and was forcing the integration of the peasants into the state, but doing so under the façade of communist ideology.

This tendency for fake communist behaviour of post-revolutionary "communist" states is also evident in the development and success of the CCP in China. While it may be the consensus view that China has made a break from its communist past and has dragged its population out of poverty by embracing capitalism, this is not particularly instructive, especially when no clear definition of either capitalism or communism exists. It would seem that the Chinese development is better explained without reference to these ideological categories at all. This development can be better explained by reference to the state's strategic interest to centralize power and its specific geopolitical context generated by circumstances out of its control.

Unlike the Soviets, the CCP was not an urban based movement and were instead based in the peasantry. They of course did not arise from the peasantry, but instead found themselves married to them following a

rather tortuous journey. To see how this developed we can again take a brief step back into the history leading up to the land reforms. With the arrival of the Western imperial powers on China's shores, China was beset by an inability to match their technological and organizational capabilities. The Chinese state was centralized, but not in any way as centralized as the Western powers.

There were many vast barriers to the actions of the Emperor and the Chinese state's attempts at reform met multiple problems, culminating in riots in response to attempts to standardize the railway system on a national basis. Local elites who had invested in the railways of their specific region seemingly feared losing their investment and managed to bring the Chinese imperial dynasty to its end as a result. Local government centers which had previously developed their own security apparatus to deal with rebellions became the basis of the Warlords that arose. National unification thus became a goal of many elites, and this is where both the CCP and the KMT derive from. Both parties were revolutionary movements opposed to the existing political order and both sought national unification. Both were also funded and advised by the Soviets and there was apparently significant overlap in their membership.

The initial alliance of the CCP and KMT ceased upon the relative success of Chiang Kai Shek's KMT in establishing some form of order following Shek's Northern Expedition against the warlords, upon which he enacted a purge of the more left wing elements of his own party and the CCP. This purge pushed the remnants of the CCP into the countryside where there was obviously no industrial proletariat. This led to a number of doctrinal changes as the CCP were ultimately forced to tap into the peasantry for support. Blockaded and under attack from the warlords, the KMT, and also the Japanese following their invasion; the CCP's only real source of resources was the peasantry and this fostered the need to develop close and direct support with the villages in order to draw upon the peasantry for manpower and supplies. The combination would turn out to be explosive and the land reforms enacted by the CCP stem from this dependency. In exchange for military service the peasants were promised land, and this according to Skocpol served three functions. First, it rewarded and strengthened the intravillage elite established by the CCP. Secondly, it removed the power and influence of the gentry who could have posed a threat by being supportive of the KMT. And thirdly, it supplied the CCP with a vast pool of infantry recruits.

As Skocpol points out, this supply of recruits for the CCP's guerilla army conditioned the CCP's approach to the peasant class. Unlike with the peasant class in the Soviet context, here the peasant class would prove to be a vital ally to the communist state. There was no desire to enforce improved productivity in this sector to try to drive industrialization. The industries of China were located in urban centers which were either controlled by the Japanese, warlords, or the KMT, and it was not until the very end of the civil war period that the CCP were able to get control of urban China. The CCP were also in a position where they were unable to enforce a draft of the peasants, instead relying on supplying large incentives by reforming land rights in the peasants interest and ideological convincing.

That any of this was even possible was a result of the varied and often mountainous terrain of China which made infantry based guerrilla possible. This allowed the CCP to operate in regions out of the easy reach of aircraft and mechanised divisions. This would prove influential even in the post war period as there remained little impetus to drive industrialisation at an excessive pace, the geopolitical imperative was not as pressing as in Russia during the interwar period. Invading a China that could field inexhaustible armies, even if they could only wield small arms, would be an off putting endeavor for any power. Neither the Soviets nor the USA were up to the task, as would be demonstrated by the Korean war in the 1950s where the Chinese were able to conduct a rather successful offensive campaign with light infantry that had little air cover.

This state of affairs was vastly different to that which faced the Soviets who had no real connection to the peasantry and were in dire need of industrialization in a short time period. Russia, especially the European section, unlike China, is geographically rather flat. It consists of an endless steppe that is ideal for the deployment of mechanised units. In addition, Russia is vast and requires the need to deploy forces to potential fronts massively far from each other which required extensive rail networks, as was demonstrated by the developments of World War Two. Russia also needed naval forces to defend multiple possible invasion points which need multiple fleets that cannot connect together easily. Without industrialization, the soviets would have been far worse off in 1939 as there was no way they could have been able to operate on the basis of a peasant based guerilla army. This explains the urgency of their actions and their botched attempts at quick reform against a

farming sector which in effect, as Skocpol notes, became a threat to the state. The Chinese faced no such urgency, and in fact had the peasants as the base of their power, so their actions when it came to land reform did not lead to a catastrophe comparable to the famines unfortunately unleashed by the Soviets. Granted there were still negative outcomes for sections of the population as a result of these land reforms, but relatively speaking the reforms by the CCP were successful.

Obviously, if ideology was the main driving force of both the CCP and the Soviets, we should have been able to see similar if not identical actions from the communist parties of both states in conformity with their ideological beliefs. Instead what we see is relatively pragmatic actions taken by state actors which had different strategic contexts. The Soviets came to power with the help of the industrial workers of Petrograd and ended up overseeing an uncooperative and unproductive farming sector. The CCP came to power on the back of peasants after being cut off from any industrial base, and their subsequent relations with the farming sections of their relative orders were obviously vastly different. There is a great deal we can learn from the experiences of the communists in the 20th century if we refuse to view them through an ideologically liberal lens colored by propaganda designed to discredit communist states.

We must ask how the communists succeeded in not only taking power, but in developing functional and transformative states. One reason for this is that the communists had a very clear focus on the nature of the state and its role due to the Marxist theory of the state as emergent from class conflict. That is, class conflict occasioned the development of a state for use by the dominant class to suppress other classes. Leninists aimed to take over this state, turn its oppressive mechanisms against the dominant class (capitalists), and to then work towards dismantling the state once class was abolished. Regardless of the veracity of this interpretation, the communists had an advantage as a result of this focus on seizing the state through leveraging class antagonism.

Another aspect of the communists' success was that they sought to create alternative bases of power which allowed them to operate without the restrictions placed on power actors by already existing structures. The Bolsheviks worked through their party and the soviets, the CCP worked through their party and the village governance structure they developed. As a result their actions were far more disciplined and

focused. We can also use this analysis to level some serious criticisms at liberalism and the liberal claims to offering better solutions to communist policies by noting the developmental nature of the communist states. It is quite well known that Marx's theory of proletarian revolution failed drastically in just those states in which he assumed it would take hold, and instead found success in more backward ones, and it is worthwhile to pause and reflect on this given Skocpol's analysis.

What exactly was it about communism and Marxist-Leninist thought especially which proved to be so well suited as the ideological basis of developing states as opposed to the liberalism promoted by already industrialized states? In both Russia and China, liberals were prominent in the initial revolution but quickly and irrevocably fell by the wayside. The reason for this seems to be that their policy proposals were ineffective, if not basically delusional, and this is curious given that they were in effect trying to imitate the successful Western powers. There were no developmental states that developed by using the precepts of liberalism and this is something which was foreseen by Fredrich List a long time before the soviets and the CCP vindicated him. It was List who famously stated that:

Any nation which by means of protective duties and restrictions on navigation has raised her manufacturing power and her navigation to such a degree of development that no other nation can sustain free competition with her, can do nothing wiser than to throw away these ladders of her greatness, to preach to other nations the benefits of free trade, and to declare in penitent tones that she has hitherto wandered in the paths of error, and has now for the first time succeeded in discovering the truth.

It is just this preaching which the liberals that led the revolutions from which they were subsequently sidelined erroneously believed, and it is just this preaching that forms the basis of liberal anticommunism which is therefore capable of quite sincerely believing that Russia and China could have industrialized if they had allowed the 'free market' to take its course. It is quite clear from Skocpol's work that a close study of the development of communist practice that a reliance on liberal interpretations of economic development would be to fall into grave

error which only benefits the purveyors of liberalism and the institutions which they defend.

Fascism as Meme

by Owen Gilbride

Mezzo

What distinguishes an idea from a mere concept? An idea is intuited, but never wholly realized. An idea is the thought of something as an isolated totality; beyond any explicit concept it is a universe unto itself. You get a sense of this when you fall in love with something, or someone. But ideas then are never possible to fully isolate and distinguish themselves for us, everything is a shade of everything else. An idea then can only exist as a moment, a presence without a before or an after. But nothing in this world ever stands still - especially not thoughts. Being is always becoming; life is always in the flow of living. An idea is a particle of thought, but thinking exists as a wave. Ideas in their actuality transform along an endless temporal trajectory. We refer to this trajectory as *the meme*.

You encounter something in the world, and it leaves an impression on you. The encounter itself might not register on a conscious level. It may feel as though some strange new intuition appeared in your mind one day, as if by magic. In any case a new idea is here, disrupting the habitual flow of your thoughts. It unsettles your assumptions, and calls into question everything you thought you knew. You could try to figure out what caused this alien thought to take root in your psyche. Even if you could trace it back to an ultimate point of origin, it'd do you little good. Sourcing a daydream is like calculating how much Oxytocin it takes to make someone fall in love. The past is of tertiary importance. What matters is that which presents itself: an impression and an imperative. You've encountered the meme.

Though it comes clothed in material form, the essence of a meme is in the sensations this form imparts. A song isn't a particular combination of sounds, but the feeling you feel when listening to them. It's a motion, a vibration, a vibe. A meme is the *suggestion* of form for which you supply content. Worldly encounters trigger internal reactions which become the basis for future acts. The meme in itself lacks substance, it is pure movement. You interpret the meme, you determine how best to represent that which it suggests to you. The process is never complete. With each interpretation, something gets left behind, and something novel emerges. The meme mutates as it wanders the psychic landscape, moving from one mind to the next. Sometimes it maintains essential continuity, at other times it splinters into distinct forms.

Let us offer an example - the meme as a fictional character. Imagine: you encounter a drawing of a smiling cartoon frog. The material form of this image is nothing more than lines on paper, or pixels on a screen. The *essence* of this image is not lines or pixels, but the idea they conjure up. Though this cartoon frog has no corporeal being, he now exists as an entity in your mind - as real as any person you've met. The idea you hold of him isn't a static snapshot of the image you encountered. He has a distinct personality. He has a history, and dreams for the future. You might imagine how he would behave in various situations. You might flesh out aspects of his persona that weren't explicit. Someone, somewhere, produced this image as the result of a creative process. The image has in turn inspired your own creative process. The mimetic trajectory: from mind, to act, to mind, to act.

A meme can be something more abstract than a character, or a kind of object. A meme could be an artistic style. Certain aesthetic qualities become associated with one another, and given a collective name. This name now conjures up an entire network of associations and possibilities. This name may well carry a distinct political, philosophical, or spiritual connotation. This name may suggest complex emotional intuitions - easy to feel, but hard to articulate. Words and symbols in general act as shorthand for complex associative chains. There are plenty of things in life which would be difficult for the average person to express in words. A term or an image loaded with implicit connotations makes these things available to us.

What enables us to receive the meme is not rational apprehension then, but more of a *sensibility*. Prior to any conscious interpretation of a

situation we always already have an *attitude* towards it. How exactly does this attitude form? Memes are always within sensibilities then, within meta-memes, if you will. The meta-meme is the field within which you build all other understanding. It provides the pre-conscious assumptions which infuse the situation with desire and meaning. These meta-memes are more like ways of life, sometimes entire nations can inhabit them. A meta-meme can get so big you mistake it for the world itself.

Meta-memes then are kind of like narratives that you observe from within. It permeates whatever language you might use to express yourself. It colours your interpretations, and presupposes your conclusions. Even in becoming aware of its presence, it continues to function as an automatic process. We're never completely aware of the meta-meme we inhabit. You can contemplate modes of thinking you've outgrown, but not the position you hold. It's too big; too immediate. It's the very thing you're using to contemplate. And yet, we wish to recognize the current limitations of our thought. To do this, we must deconstruct those modes of thought which brought us to our present position.

Consider the much-maligned "Enlightenment" and its political philosophy of Liberalism. In previous epochs, society had taken official titles of authority as given according to the standards of Tradition. This didn't jibe with the ascending merchants and industrialists. They had obtained power not by tradition, but as a result of commanding the newly emergent industrial system. They came to conveniently view tradition as an arbitrary imposition, and (paid intellectuals to) question its foundation. Liberalism put forth a bold proclamation: a fecund social order is one in which each is free to do as he sees fit. The proper role of authority is not to put forth commands, but to ensure the liberty of every individual. Cohesion comes, not from brutish imposition, but from the common sense of educated men. Authority, then, was no longer understood in terms of a tradition, no longer could this authority place limits on the bourgeoisie. It became an abstract rationalization of the economic relations within the industrial system they controlled.

One must consider the kind of community Bourgeois Liberalism addressed. A community referred to a distinct cultural group inhabiting a distinct geographic region. A community spoke one language, worshipped one God, and had a particular set of social norms. A community was not a generic concept, but the specific world one

actually inhabited. Furthermore, the democratic privilege was not afforded to every individual in the community. The Liberal Subject was a gentleman, with pecuniary instincts and well-defined social responsibilities. He was free, yes - free to carry out the role for which he had been cast.

The Liberal Subject inhabited a homogenous cultural milieu. Two men might disagree on a subject, but they shared an understanding of *how* to disagree. Individual differences, insofar as they existed, suggested continuity at a higher level. At most, points of distinction would inspire lively debate, and more nuanced understanding. Idiosyncratic tendencies were of no great concern. On the fundamental questions of life, every well-bred man was sure to harmonize. This was the *pièce de résistance* of Liberal Ideology: a social fiction known as Universal Rationality.

Rubato

Liberalism now spans the entire globe, and comprises every living human being. The bourgeoisie challenged tradition on the grounds of being an arbitrary imposition. In so doing they managed only to dismantle authority, *power* however remained as a brutal reality which seems to have come from nowhere. Liberalism does not tolerate authority, it calls into question every rationalization of social organization. The very culture of the bourgeoisie was challenged. Every individual becomes equated, and every lifestyle validated. Freedom always needs new scapegoat oppressors to negate. The Liberalism of today is world away from the French Revolution. Following philosopher Panagiotis Kondylis, we will use the term *Mass-Democracy* for the contemporary arche meta-meme.

The qualities that Liberal Subject was supposedly endowed with are viewed increasingly with suspicion and must be emptied out. The empty participant in Mass-Democracy becomes increasingly abstract, a theoretical space where authority is negated. Thus, scientific rationale comes to replace custom as the primary organizer of society. These abstract models, divested of particularities, become the essence of culture. Every particular quality of a person or people becomes non-essential. Every point of distinction is arbitrary, and replaceable.

Mass-Democracy functions as a global self-stabilizing monoculture. In earlier stages of Liberalism, the founding myth of a universal common sense was easier to maintain. A community *was* of one mind, more or less, and rarely exposed to different modes of thought. Today, this is no longer the case. An extreme diversity of lifestyles and historical considerations exist within the global community. This myriad of differences must become secondary to abstract systematic logic. Depersonalized rationality must form the basis for all decisions affecting the whole.

What is life like for the Mass-Democratic individual? You have become atomized, severed from any fundamental connection to a people or a place. The social connections you maintain are tenuous - based on sentiment, rather than need. Your primary identity is as a statistical unit. You produce, you consume, your essential distinctions endure only as lingering negatives to be overcome. Race, gender, and sexuality are only to be discussed if they impede their own dissolution. The ideal individual is an interchangeable unit, who can take on any role.

If you don't like your city, you can move to a new one. You'll still buy the same products, and consume the same media. If you don't like your friends, you can abandon them for new ones. They'll still make the same jokes, and parrot the same opinions. Plurality is an illusion. Every distinction is a veneer covering the endless process of production and consumption. Everyone everywhere is saying the same thing in different words. At least in the old days there was a sense that things might be different in the next town over.

This lack of any defining social identity becomes framed as individual liberation. No longer does some set of arbitrary cultural imperatives limit your movement. No longer does some saturnine patriarch stand between you and endless self-indulgence. You can shirk your responsibilities. You can get as fat as you want. You can masturbate as much as you want, to whatever you want. Implicit is the suggestion that all human endeavours are an attempt to get one's rocks off.

Personal distinctions are celebrated, but only insofar as they become generic. All beauty is equal; all achievements are equal. No taste is off-putting. No opinion is invalid unless it is one which invalidates. Every personal narrative is permissible, but must defer to the societal meta-narrative. If possible, one attempts to view that which displeases as valid alternative lifestyle. "No judgement!" you proclaim, as a show of Mass-

Democratic solidarity. You harbour no strong feelings about that which you encounter in the world. If you did, you would keep them to yourself, to ensure functional stasis endures.

There seems to be a paradox here. Everything is permissible, except for that which is not permissible. Act as you like, but follow all the rules. Believe what you will, but above all believe what we tell you to. Mass-Democracy frames itself as total freedom of movement. In reality it is - like all ideologies - a limitation placed upon movement. Mass-Democracy is a distinct social order, framed as the plurality of all orders. But necessarily, any social *order* must promote certain ideas, and reject others. Let us take a moment to consider this.

Societies need to be composed of predictable behaviours, if "freedom" induced behavioural randomness you are no longer living in a society. Normativity and therefore trust needs to exist to make behaviour of others predictable enough to have the confidence to act the same way with regularity. However a cosmopolitan bugman rarely even knows half the people living on his street. He cannot trust a stranger with whom he has no personal connection. He can, however, trust those who behave according to predictable social norms.

Social normativity was present in bourgeois society, with its many codes of conduct. Normativity is present in Mass-Democracy, but it has become opaque. The individual receives behavioural imperatives, but these are never framed *as* imperatives. The Mass-Democratic individual must carry out every command as if it were his own idea. He must affirm certain views, and champion certain causes. He must recognize certain groups as oppressed, and others as the oppressor. He must concern himself with certain problems, and disregard other concerns as paranoid. These positions spread via mass (now increasingly "social") media. The individual is to present them as truths he came to by way of rational self-reflection. If he fails to do so, it is because he lacks education.

From what source do these normative guidelines emerge? One can obviously no longer point to tradition. Contemporary norms are a patchwork; the result of constant negotiation between heterogeneous forces. Different groups hold different views on what "truth" entails. Mass-Democracy blends their specific truth into the generic framework of society by creating the illusion of tolerance. Within Mass-Democracy, groups perish as distinct identities in their (pseudo-)recognition. The

price of recognition in Mass-Democracy is the freedom to refuse to recognize everyone else, eliminating all genuine difference.

In Mass-Democracy, nothing is ever more than a struggle for attention. Every group demands to be heard, but nothing is ever actually said. Disconnected elites promote whatever cause serves their short-term interests with even short-term spurts of media-provoked hysteria. These incoherent power negotiations come to rule over society at large. Power lives on as a blind, amorphous golem, exploiting the nihilistic confusion to present vapid condemnations as simulated revivals of meaning.

You shear off your particularities, and purchase new identities on the market. Every form becomes a Halloween mask, and every act an affectation. You do things because your peers reward you with social status for embodying a certain role. You do things because they're the sort of things the character you're playing would do. Nothing is a way out. Nothing ever leads anywhere but back to the hive. You can flavour the soy protein as you wish, but it never becomes real meat. Life is a marriage which goes on, long after the thrill of loving is gone. It endures of the sake of the children - separation might prove more dangerous than sterility. You have a mouth but no longer a scream. You are pure form without content.

Mosso

Let's review. A meta-meme that reaches the level of dominant ideology immerses you to the point of providing a framing narrative for life as a whole. Trying to think about what this is whilst inhabiting it is like trying to see what your eyes look like. You can't see your eyes, because they are the very thing you see with. You can feel their presence. You understand that they're there. You can talk about them. Maybe, with the right kind of surface, you can see them reflected.

Revolutionary theories are the reflecting pools of dominant ideology. You meditate upon the idea that life could be so much different than anything you've ever known. You feel primordial nostalgia for things you've never seen. Your daydreams become consumed by visions of subaltern Shangri-Las. This is the revolutionary ideal, a prospector's map to parts unknown. In truth, you never leave your current position. Any thought of a different mode of being is only your current mode with

a mask on. The point of the exercise is not to escape your current frame, but to recognize it *as* a frame.

Dominant Ideology holds little regard for such speculative undermining. Talk of revolution presents a lapse of faith, a desire to become something alien. Mass-Democracy holds particular contempt for proposals which draw inspiration from tradition. Scientific Rationality frames itself as the absolute pinnacle of human cognition. From this vantage point all previous modes of thought are dissectible. Mass-Democracy is an ideological Matryoshka doll. To draw from the past is to limit one's thinking - to re-animate old contradictions. Thus, revolutions of a conservative or reactionary nature are viewed with suspicion. Only groups which appear pitiful or weak may make demands in the name of particularity.

Modern civilization presents itself as the form in which all prior forms endure. Likewise, it presumes that it is the basic framework upon which all future forms will develop. It doesn't want to move backwards, and it can't allow for radical discontinuities. It can, however, consider any proposal framed as an extension of the current order.

But Ideology is not something you can put on like a new t-shirt. The revolution will not be commodified. Revolution is an all-consuming wave, which overturns any sense of familiarity. It comes not as a logical determination, but as a flash of insight. It isn't rational, it's world transfiguring. Thus, the revolutionary aspect of any idea is not found in discourse. It exists as a sensibility, hovering beyond the limits of conventional articulation.

Let us envision a progressive critique of Liberalism. Consider the possibility that Liberalism presents a false democracy. It is Authoritarianism masquerading as an egalitarian utopia. This is inevitable, in a system predicated on Capitalism's class antagonism. "Universal" Rationality reflects the interests of the ruling class, foisted upon the masses. Cultural distinctions serve only to divide, and to foster egoic self-interest. Let us, then, abolish all categories, and treat humanity as a collective whole. Let us build a world not on individual greed, but from a shared desire for human prosperity.

The socialist utopia doesn't challenge the foundational narratives of Liberalism. Rather, it proposes a solution for problems Liberalism already recognizes. Socialism says: it isn't the plan that's bad; it's the

current execution that needs work. We have not yet become rational *enough*. The liberated comrade is a sort of aspirational ideal for the liberal subject. At last, his reason overcomes the influence of biological imperatives and frivolous desires.

Mass-Democracy is able to interpret socialist ideology as a perfection of itself. It suggests the completion of a long ongoing move from the particular to the generic. It discards irrational group identities in favour of universal cohesion. It is society as an engine of pure production, stripped of all that impedes it. The socialist may at times be over-zealous, but his project is respectable. In abolishing all distinctions, one removes the very idea of a world beyond the end of history.

Contemplation of socialism will not serve our current purposes. Socialism is too easy to rationalize; too easy to load with logical presuppositions. We're looking for areas of experience which defy rational articulation. We're looking for flavours which cause Mass-Democracy to experience indigestion. What ideas does its language not afford expression? What positions cause it to abandon its own foundational narrative? What *scares* the Mass-Democracy?

Liberalism frames itself as the position all individuals gravitate towards, given the right means. Any individual who fails to adopt Liberal ideology must lack resources or education. A foreign population only fails to become Liberal because they've lacked the opportunity. They need schools, and social funding. If you give them schools, and they still fail to become Liberal, something must be wrong. It might be that the textbooks were somehow racist. We need to give them the *right* education, and they'll be sure to adopt our ways. Humanitarianism is the continuation of Imperialism by other means.

Mass-Democracy attributes impermissible behaviour amongst populations of underdeveloped nations to material disadvantage. There are other forms of disadvantage, applicable to errant individuals in developed nations. An individual may fail to behave in a rational manner due to aberrant psychology. He shoots up a crowded food court because of unfortunate brain chemistry. Neurosis is the mental equivalent of a tornado. Mass-Democracy recognizes these natural inconveniences as problems to iron out. In time there will be treatments for every mental disorder. In time there will be machines to stop tornados and earthquakes from happening. Socialism is nothing more than an amplified desire for comfort. No surprises.

Some forms of impermissible behaviour are more difficult to rationalize. Sometimes, the aberrant individual fails to present himself as a victim in need of repair. It was as though he was proud of his mistaken behaviour! Sometimes an entire group begins to behave in such a manner, and this is where it gets to be a problem. It's all well and good if an identity group presents their particularity as a problem to solve. Racial and sexual minorities want to be normal. They want to have harmless outlets for their idiosyncrasies. This is fine. But some groups seem wholly content to remain distinct. They reject Liberalism outright. They reject the global community in favour of their exclusive club. They champion particularities which are at odds with the imperatives of the universal.

This won't do at all. Mass-Democracy prides itself on being the natural preference of every sane individual. Thus, it cannot tolerate any perspective which flouts its imperatives. Localized societies of the past could disregard the barbarians living beyond the walls. Mass-Democracy needs everyone everywhere to adopt its ways, and to act like it was their idea. Uncooperative identity groups are more than a threat to the social order which must be cast out. Their very existence challenges the foundational myths of Liberalism. Doubtless, this irrational behaviour stems from some neural misfiring, as-yet unseen. But at present there is no time to speculate. The egregious identity group presents an immediate threat. It is a demon in need of exorcism.

This demon is a meme which resists the meta-meme, the red pill out of the matrix. It presents a compact unit, with no desire for general proliferation. It reserves itself for the few, only those who meet particular requirements can join the club. It has no interest in adapting itself to the needs of outsiders. Thus, dominant ideology sees it as a tumor on the social body. It is a malignant growth which acts counter to the interests of the universal.

Fascism. Like an infectious rhythm, few can describe it, but everyone can feel it. Fascism is the ideology of villains - those who oppose all Liberalism holds dear. Remember, to inhabit the meta-meme requires that you never see anything external to it. When you contemplate another mode of being, it's always as a variation of your current mode. Socialism is only grasped as a Liberalism that has perfected itself. Fascism is radically *outside*. Liberalism is the force which liquidates all structures. Fascism is the structure which smashes apart Liberalism.

When militants detonate a bomb in the name of their creed, this is Fascism. When cops target under-privileged minorities, this is Fascism. When the designated oppressor takes pride in his own group, this is Fascism. There's no rational reason why the Fascist refuses to be part of the team. He's a bully. He doesn't want to play fair. For the Liberal, his logic makes no sense. For the Socialist, his logic presents a vile distortion of Marx's teachings. For the Capitalist, Fascism is the desire for which one can supply no commodity. Fascist inclinations are those to which society can afford no role. The fascist impulse represents pure content without form.

That's Fascism in the colloquial sense. What about *historical* Fascism? Historical Fascism is the Original Sin of the 20th Century. It is definitive, eternal proof of humanity's potential for irrational evil. It's the madness that ensues when individuals rally around antiquated notions like Authority and Race. It's what happens when you place one man above the law. Historical Fascism justifies Mass-Democracy's liquidation of the particular into the generic. We need to abolish differences between peoples, or this ghoul will keep returning. Fascist impulses become equated with the perpetuation of the Holocaust. One meditates upon the horrors of the World Wars to find peace with sterile modernity. Better a monad than a monster.

Mass-Democracy aims to present itself as a theme park of hedonic self-stimulation. To that end, it aims to commodify every irrational desire. Every human impulse becomes deconstructed, and re-presented as a simulation. This process can only go so far. You can cater to impulses which cause an individual to moo like a happy cow. You can't cater to impulses which attack the very roots of your worldview. You can't homogenize that which founds itself on radical distinction. These impulses are not tolerable. One must pull them out at the root.

Liberalism founded itself on the idea of rational debate between equal parties. This privilege extended itself to members of the community, but not to outsiders. Mass-Democracy claims to represent the entire globe, but it still needs a threat from the outside to justify reinforcing its interiority. This is where Fascism comes in.

Mass-Democracy presents Fascism as one-dimensional evil for which no rational explanation exists. Fascism is the reason why there's pain and suffering in the world. It's why people don't get along. It's why no one is holding hands in a field singing Kumbaya. Any behaviour Mass-

Democracy deems problematic, it labels "Fascist". This allows it to maintain its founding myth of universal tolerance and plurality. All behaviours permitted, *except* for that pure, irrational evil known as Fascism. And what is Fascism? It's whatever we say it is.

We begin to sense the limits of our current perspective, and things which may exist beyond them. Socialism presents an aspirational beyond. Yet it is a beyond that is completely *within*. Fascism, though, is a beyond made wholly off-limits. What is it, exactly, that provokes such intense reactivity? What is it that causes Liberalism to forego its own imperatives?

It was as though we feared seduction by genocidal impulse at any moment. Is aestheticization of the political all it takes to turn men into monsters? What good is rationality, if it's overpowered by marching bands and Hugo Boss uniforms? There must be more going on here. A simple aberration doesn't warrant such vigilance - its defects are immediately obvious. Fascism presents a compelling force which defies rational understanding or negation. We aim to determine what this force might be.

To demonize something is to turn it into forbidden fruit. To reduce something to pure evil is to ignore its obvious appeal. Even if you oppose Fascism, you gain something by understanding it. People didn't vote Hitler into power because they wanted to become the bad guys of history. There was something there; something real and vibrant and living. If you're afraid of Fascism, you ought to know why people wanted it in the first place. If you daydream of Fascism's return, you ought to know why it fell apart. So, let's imagine Fascism as it might once have appeared. We do this, not to resurrect something long-since dead, but to catch a glimpse of our own reflection.

Benito

By the dawn of the 20th Century, Monarchy was on the ropes. The ascendant Bourgeoisie had, in large part, negotiated power away from the nobility. Liberal-Democratic values were flourishing at every level of society. Gone were the days when men could accept the absolute rule of some hereditary oligarch. The French and American revolutions were testament to this. The new world-dream: to make of one's own life a masterpiece.

The working class were growing more organized by the day. The proletariat was the engine by which industrial civilization turned. The socialist revolution which had been foretold by Marx seemed on the verge of coming to pass. If anything, the Great War seemed only to seal the deal. The "Great" War: senseless devastation, brought on by a sickness called Imperialism. In the eyes of many, socialism was the antidote to this outgrown ideological malaise.

Socialist movements had been sprouting up across Europe for decades at that point. Each reflected the soil from which it emerged, and came to favour distinct forms of praxis. In Britain, the Fabian Society oversaw the gradual legislation of social-democratic reform. They prided themselves on patience, and worked according to established parliamentary logic. In Scandinavia, socialist parties came to power gradually through the democratic process and reflected values already widespread, thus there was no need for political violence. In France, the Syndicalists advocated direct action on the part of workers. The French detested idealist prattle; they preferred demonstration. On the Italian Peninsula, too, were socialist groups, news publications, and would-be revolutionaries. One stands out amongst their number: a young man by the name of Benito Mussolini.

His father was a blacksmith, who spoke in reverent tones of Bakunin and Mazzini. His mother was a catholic school teacher, but those things failed to take hold. Growing up poor served to awaken Benito's class consciousness at an early age. By his early 20s, he had become active in political action and journalism. In 1912, following a brief sojourn in Switzerland, he became editor of *Avanti!* - a major Italian news publication. In short time, Mussolini had become a socialist thinker of note.

Mussolini was by no means a dogmatic adherent to any one school of thought. He was well-acquainted with the Italian theorists of the previous century. He drew inspiration from Nietzsche no less than from Marx. Sharing his father's anti-clerical sentiment, Mussolini held little regard for Christian pacifism. He looked askance at certain socialist concepts, such as egalitarianism. Mussolini embodied an undercurrent of skepticism towards the socialist ideal. In many ways, it seemed like a crystallization of instrumental reason. Socialism promised much, but was it worth reducing life itself to economic determinism?

On a practical level, Mussolini recognized the limits of Marx's analysis. Italy in the 1910s was far removed from England in the 1860s. The Italian nation had reunified mere decades prior. Her industry lagged far behind those of imperial Britain, France, or Belgium. The Italian people lacked a national identity, or a disciplined work ethic. In Mussolini's eyes, what Italy needed was not international solidarity. They needed a masculine ideal, and awakening to their own potential.

For some, the onset of the Great War was an opportunity. Italy might finally assert its identity, and shake off centuries of foreign influence. Nationalists, Interventionists, and Syndicalists called for Italy to enter the fray. The Socialist Party advocated neutrality, dismissing the war as a bourgeois diversion tactic. This was at first the position Mussolini assumed, though he felt conflicted. The Nationalist position appealed to his personal sentiment. He recognized the need for a myth of the people. The masses needed a unifying ideal to rise out of blind economic self-interest.

In October of 1914, Mussolini declared support for Italian entry into the war. Immediately, he became excommunicated by Socialist Orthodoxy. Removed from his editorial position, he started his own newspaper, *Il Popolo d'Italia*. This was the formalization of Mussolini's alliance with the disparate interventionist forces. In time, this alliance would serve as the germ cell of the National Fascist Party.

Mussolini saw active duty in the First World War. Throughout this period, he began to take increasing influence from the Nationalist perspective. Socialist notions of class warfare began to hold less appeal. Such antagonism could only destabilize Italy, which had not yet reached industrial maturity. What Italy needed, rather, was collaboration between the classes. Individualism impeded social development. Left to their own devices, the masses were chaotic and prone to cowardice. They desired change, but lacked a will to realize it.

Inspired by Marxism he understood the potential of a revolutionary vanguard. Mussolini envisioned a nucleus of strong individuals from every level of society. They would spearhead the revolutionary effort. They would act as self-sacrificing heroes, embodying the spirit of the times. They would inspire in the masses a national ideal, and guide them to victory. For genuine revolution - and not mere reform - one needed great minds. One needed artists and visionaries, who could awaken a fighting spirit in the common man.

Grandioso

Italy had been in formal alliance with the Germanic Central Powers at the war's outbreak. Regardless, her entry into active combat was to be on the side of the Allied Forces. Italy had negotiated a deal with the Allies: territory expansion, and independence. For too long had Italy been under the influence of the Austrian Empire; it was time to assert themselves. And indeed, Italy's role in the conflict was to prove instrumental. They played a crucial part in bringing down the Habsburg elite, who had known power for centuries. By war's end, Italy became recognized as a distinct force in modern European politics. The League of Nations granted the Italians a permanent seat on their council.

This recognition came at a cost. The war had taken the lives of half a million Italian troops. Massive economic disparity spread across the peninsula. National territory expanded, but nowhere near the amount promised. The Italians felt betrayed by their international alliance. They felt frustrated by the conditions at home. The sense of agency the war had awoken brought with it a deep yearning for reform. The existing parliament seemed incapable of initiating such drastic transformations. What Italy needed was a wholly *new* political force.

The National Fascist Party came into being on March 23rd, 1919. They were of disparate origin: socialist outliers, interventionists, and followers of Mussolini. They derived their name from "fascio", the Italian term for a bundle of sticks. In isolation, they were weak, and soon broken. Together, they became a force greater than the sum of its parts. The fascists viewed themselves as a loose, temporary coalition. Their concern lay not in promoting dogma, but in bringing about practical reform. Their intention was to move according to the sentiment of the masses. If the people desired moderation, the fascists would be moderate. If the people desired intervention, the fascists would intervene.

From the outset, then, they favoured a distinct, *Italian* spirit. Socialists, with their international outlook, failed to address this spirit. They saw the masses as little more than a disadvantaged economic bracket. Talk of trade unions and theories of surplus value failed to inspire. Fascism, by contrast, was politics with a pulse. It didn't speak to a generic left/right dichotomy, but to the uniqueness of the present moment. It spoke to something beneath the Liberal subject, and beyond the Socialist utopia.

It didn't speak of reducing individual restrictions, or dissolving formal distinctions between groups. It spoke of *constructive* liberty, the conscious affirmation of mutual dreams. In this new movement was a feeling of continuity. It suggested a lineage, extending from ancient Rome into a distant future.

Anti-Fascist forces emerged almost immediately, a Leftist reaction to Fascist intentions. For Socialists, this new movement presented a gross distortion of Marxian concepts. For Anarchists, talk of subsuming individuals to the collective will was pure anathema. Fascists were gaining popularity across Italy, overturning whatever resistance they encountered with ease. Panicked socialists, fearing potential Fascist violence, responded with violence of their own. Their violence was chaotic, lacking any central organization. Individual militants and spontaneous mobs attacked anything they perceived as a threat. They injured unaffiliated civilians, and destroyed public property.

Fascists did not destroy public property. They spoke of building. Fascists didn't form amorphous mobs. They were methodical, targeting opponents with military coordination. In simple terms: they understood optics. Public sympathy for Fascism grew. Socialists seemed little more than violent aggressors. For the youth of Italy, the symbolism of this conflict was obvious. On the one hand, there were representatives of a burgeoning national identity. On the other, a destructive alien force. The fight itself was a means of escaping mundane existence. The fight became a gateway into the historical.

Mussolini found this all rather troubling. The movement had intended itself as a temporary reformist operation. It was becoming a war machine. He called for restraint. The defeat of socialism was not the primary task, and violence was a last resort. These calls fell on deaf ears. The Fascist movement was developing not according to the will of any one individual. It was a collective will, growing as a result of its own actions. It was like a microphone next to an amplifier, causing a feedback loop. A distinct form was crystallizing, in the dissolving pool of modernity. It called upon Benito Mussolini to be its avatar, its centre, and its voice. Mussolini, for all his confusions, recognized the great potential here. Was this not the supra-individual will he had long aspired to bring forth? If he failed to direct this kinetic build-up, it was sure to dissipate. Thus, in 1922, Mussolini embraced the role he had been cast into: *El Duce*.

The National Fascist Party began to operate like an army conquering ground. Fascist squadrons became *de facto* governing bodies in towns across the peninsula. With Machiavellian finesse, Mussolini talked the Italian government out of taking retaliatory action. He negotiated alliances with parliamentarians, heads of industry, and the Vatican. He expressed his loyalty to the monarchy, and the military. Fascism was an ideology of peace.

In October of 1922 Fascism announced that it planned to take rule of Italy. A squad of 30,000 fascist men marched on the Roman capital. Italian Prime Minister Luigi Facta, fearing insurrection, ordered military intervention. To Facta's dismay, the King of Italy refused his request. Mussolini commanded favour with the military, the business elite, and the political Right. He was, in the eyes of the Italian king, worthy of the title of Prime Minister.

Mussolini displayed an immediate aptitude for governance. He passed legislation favouring industrial development, against the internationalist wishes of the unions. Rapid agrarian expansion became possible, following the draining of massive regions of marshland. Corporatist policies gave businesses distinct public roles. From now on, they would work according to national interests. Largescale public construction projects reduced unemployment to great degree. Rail lines spread across the country.

Having himself emerged from the news industry, Mussolini understood public relations. He understood the need for public spectacle. In short time he had constructed for himself a larger-than-life persona. He sought to be the embodiment of the masculine ideal he promoted. He sought to be more than a man - an *icon*.

The national ideal became disseminated through every major form of media. New education models promoted physical health and military discipline. The eminent philosopher Giovanni Gentile set to work developing formal fascist doctrine. Idealism was championed, and rationality dismissed. One oriented themselves not towards what was, but what could be.

Within a few short years, Italy became an industrial powerhouse. The world took notice. Fascist movements appeared throughout Europe. Some were Christian, others Pagan, still others completely non-secular. Marcus Garvey described his Pan-Africanism as fascist. The Zionist

Betar cited Mussolini as an inspiration. It was not a movement founded on racial or religious hatred. It was not defined by rigid dogma, but by a desire for results. Many saw it as Socialism that *worked*. It upheld the interests of those it represented, rather than telling them what they ought to want. Mussolini seemed a sort of political visionary, a herald of the world to come.

Of course, as with many things, the most iconic variant was the result of German engineering.

Ossia

Adolf Hitler was born in 1889, in a provincial Austrian town, to a lower middle class family. His father, Alois, was a disciplinarian with a penchant for corporeal punishment. He expected his son to pursue a sensible career as a civil servant, after his own fashion. Adolf resisted the idea of a life path so mundane, much as he resisted his father's secular worldview. The young Hitler was, in fact, something of a romantic. He loved his homeland, and the history of his people. He dreamt of the greatness that German culture might once more aspire to. He even drafted elaborate architectural plans for the cities he hoped to one day build. Decades later, some of Hitler's adolescent designs would see material realization.

Hitler's early ambition, as is well known, was to become an artist. In 1907, following the death of his father, he travelled to Vienna, intent on studying at the Academy of Fine Arts. Fate proved less than cooperative. He faced academic rejection, followed shortly thereafter by the death of his mother. Hitler found himself at age 18 an orphan, destitute, in an uncaring world. For five years he worked as a labourer, never rising from the lowest rungs of society.

He came to detest the international character of Vienna - formless, dirty, and decadent. The parliament was a corrupt, short-sighted bureaucracy. It pursued its own survival, at the expense of the culture it represented. Advocates of Marxism opposed Capitalism on ground with which Hitler could sympathize, but he soon dismissed Marxism as an internationalist plot to exploit the working class. Their rhetoric was empty and manipulative, the work of foreign intellectuals. Most of all Hitler came to resent the Jewish race. The corrupt politicians, the media, the business

elite, Marxism - it was all their handiwork. Hitler saw the Jews as an alien force corroding his beloved German culture.

Unlike Mussolini, Hitler lacked a distinct framework upon which to develop his understanding. He was, rather, a man of convictions. His experienced life, and developed intuitions from his experience. When he read books, he sought that which might bolster his position. Mussolini was a pragmatist. He understood the complexities of his situation. He adopted a role dictated by the particularities of his historical moment. Hitler, by contrast, had from his earliest years envisioned a distinct ideal. He felt little need to orient himself towards existing theoretical constructs. He adopted that which served the realization of his vision, and discarded the rest. He was, after all, an artist.

In 1912 Hitler left Vienna for Munich, a city which he would soon hold in high regard. Vienna had presented deracinated cosmopolitan grime. Munich offered up a distinct *German* character, architectural grace, and artistic sensibility. It was not a city driven by financial concerns, but by *kultur*. Hitler had left a world he feared was growing, and entered one he hoped could yet endure. In 1914, following the outbreak of the Great War, Hitler enlisted in the Bavarian Army. Much like the youth of Italy, he saw in conflict the opportunity of a lifetime. The world he had known was one of shopkeepers, bankers, and politicians. The battlefield was home to the heroes of his childhood, the warriors of Germanic history.

Hitler later described this period as one of the high points of his life. It tempered his disposition, and deepened his appreciation for the Germanic soul. The spiritual highs were, alas, counterbalanced by deep frustration. The commanding officers seemed inept, and the media traitorous. Too often it felt that decisions were being made in favour of cowards who hid in the cities. Too often it felt that those dying on the battlefield lacked crucial support. The press seemed intent on instilling pacifism in the masses. Meanwhile, Allied demoralization campaigns had clear psychological effect on the German troops. It was here that Hitler began to develop insight into the mechanisms of propaganda.

With the downfall of the Central Powers in 1918, Hitler's disdain crystalized into hatred. Systematic corruption had led Germany to defeat: politicians, press, and socialist intelligentsia. Behind it all, the Jews, hatching plans for world domination. With the looming threat of Marxist revolution, Hitler was not alone in his thinking. Millions of Germans felt betrayed. It was as though the great military efforts of the

last four years had been for naught. It was as though millions of valiant young men had sacrificed their lives in vain.

Facing billions of dollars in reparation payments, Germany underwent rapid economic collapse. In Hitler's eyes, this expedited the process of cultural decay. Economic imperatives ruled over all. Infantile aesthetics became widespread, appealing to the base impulses of the widest demographic. Everything became pornographic. All forms of sexuality became permissible. Old norms fell in disregard. Couples, faced with harsh financial realities, were unable to conceive starting families. Young men became aimless and dissolute. Manchildren and addicts, they lacked any frame upon which to found coherence. Young women became prostitutes *en masse*. Hitler developed an interest in politics.

In 1919, Hitler became a member of the German Workers' Party. Founder Anton Drexler articulated Hitler's own anti-Marxist and anti-Semitic sentiments. Soon it became clear that Hitler himself had a gift for public speaking. He understood, instinctively, that the masses were not won by rhetoric, but by passion. Hitler's speeches began to draw crowds. The DAP, once obscure, began to draw notice.

In 1920, Hitler became the party's chief of propaganda. The DAP rebranded, becoming the National Socialist German Workers' Party, or the NSDAP. Hitler continued to develop his oratory, and the crowds continued to grow. By mid-1921, he had become the chairman of the NSDAP. Immediately he set to work, forming a party militia, and formalizing the party's public image. Hitler oversaw every aspect of design, from the swastika to the colours on the posters. No aesthetic detail escaped consideration. They were key to fostering cohesion between party members, and awe amongst the public.

The Nazi Party continued to grow in popularity. Economic conditions had only deteriorated in the initial years of the Weimar Republic. For many, Hitler gave voice to a deep sense of frustration, and a desire to reject this hopeless state of affairs. When he stood before a crowd, it was though he was a man possessed. In private conversation he seemed reserved, and rather dry. Behind a podium, it was as though some great primordial force spoke through him. He could make a man believe that the spirit of the Aryan Race was alive and conscious. He brought life to every repressed dream, every lingering fear, and every whispered suspicion. He transformed swarms of monads into a collective body

capable of superhuman tasks. He whipped atomized frustration up into a single focused beam of energetic potential.

Hitler began to take inspiration from what was going on in Italy. He saw the Fascist project as being in alignment with his own designs. Following the March on Rome, Hitler began to plot his own insurrection. This was to be the infamous Beer Hall Putsch. In November of 1923, two thousand Nazi supporters marched on the Munich capital. Unlike the fascists, they met armed resistance. Violence broke out. Sixteen members of the NSDAP and four members of law enforcement lost their lives. Hitler was arrested on charges of High Treason. The NSDAP was banned from public demonstration.

Though the revolutionary attempt failed, it succeeded in drawing attention to the Nazis. As usual, Hitler demonstrated impressive oratory whilst on trial. As with most self-proclaimed socialists, many agreed that his basic intentions were good. Over an eight month prison term, he completed an autobiography. It became a bestseller. Following his release in December 1924, Hitler resumed pursuit of his political ends. He had come to respect the dangers of violent revolution. From here on out, he intended to conduct himself wholly within the limits of the law.

Accelerando

By the mid-1920s, economic conditions in the Weimar Republic had stabilized. Legal restriction placed upon the NSDAP became relaxed. Hitler himself was still banned from giving speeches in Bavaria. For a time, the Nazis moderated their approach, building presence across Germany.

Things changed, following the stock crash of 1929, and the onset of the Great Depression. Economic conditions in Germany deteriorated. Millions found themselves once more frustrated by the Weimar government. The NSDAP experienced a massive jump in popularity in the 1930 German election. In 1932, they placed second, forming a coalition with the German National People's Party. In 1933, Hitler became Chancellor of Germany.

Four weeks later, the Reichstag parliament building was set on fire. Hitler attributed this to an imminent Communist uprising. In light of this, German president Paul von Hindenburg granted Hitler emergency powers. With the passing of the Enabling Act, Hitler's cabinet became

free to pass any legislation. No longer were they required to seek parliamentary approval. If needed, they could bypass the republican policies of the Weimar regime. This aligned well with statements Hitler had expressed years prior. The role of the true leader is not to bargain for the majority's approval. The role of the true leader is to lead, and to create.

In May, Hitler dissolved the trade unions. In July, the NSDAP became the only legal political party in Germany. There was a purging of military leaders seen as sources of friction. This was by way of a political method known as the Night of the Long Knives. Death counts remain inconclusive. Hitler sought to reduce all bureaucracy that stood between him and the masses. By mid-1934, he had secured full control of the German military and state.

Under Hitler's leadership, German unemployment fell by five million in four years. Like Mussolini, he initiated massive public works projects to create labour jobs. Unlike Mussolini, his architectural plans were sometimes sourced from childhood designs. Many went to work rebuilding German military infrastructure. Germany navigated the Great Depression far greater than most. Some attributed this success to long hours and deep cost cutting measures. Others attributed it to an awakening of the *Völkisch* spirit. In any case, it made a strong impression. In 1936, Germany hosted the Olympic Games. In 1938, Time Magazine declared Hitler Man of the Year.

We would, of course, be remiss to ignore the racial policies of Nazi Germany. After coming to power, the NSDAP declared a boycott on all Jewish-owned businesses. For the rest of the 1930s, restrictions on Jewish citizens would only increase. Businesses were closed, and living options were limited. Jews were encouraged to emigrate out of Germany by the thousands. Whether the Nazis harboured genocidal intentions or not, one thing was clear. They aimed to promote interests that were *particular*, not universal. Policies against racial minorities, homosexuals, and the mentally disabled became common. Hitler had laid this out years prior, in his description of an Aryan breeding program. Regardless of personal sentiment, one recognizes that Hitler was a man of his word.

By mid-decade, Germany's desire for territorial expansion was becoming plain. By 1938, Hitler was making active plans for war. On September 1st, 1939, German Forces invaded Poland. Immediately, France and England declared war on Germany, joined by several allied

nations. Germany formed a military alliance with Japan and Italy. The Axis forces were confident that they could make short work of the Allies.

What actually occurred, by most accounts, was the deadliest conflict in human history.

Mussolini viewed the onset war as the final battle for European rejuvenation. On one side was the Axis, representing the youthful virility of Fascism. On the other side, the Allies, who sought to maintain stagnant Liberal Democracy. Victory seemed assured, but this would prove not to be the case. Italy had not remilitarized to the same degree as Germany. The Ethiopian War of the mid-1930s had depleted her resources. The Italian forces were unable to hold their own in this new conflict. Increasingly, they became subsumed under the superior German force. This fostered resentment in the people of Italy. Fascism itself had emerged from a desire to shake off Germanic influence. Now it seemed that Italy was becoming little more than a German puppet state.

Mussolini felt pressured to adopt the NSDAP's hardline racial policies. Though he had long championed the superiority of his own people, this was not his way. Mussolini had had Jewish lovers. Marxists had once been his closest comrades. Not for the first time in his life, Mussolini made calls for restraint. It did little good.

In 1943, Mussolini was removed from national leadership, and imprisoned. Fascists maintained control of limited territory in Northern Italy. Two months later, German forces freed Mussolini, placing in charge of the *Salò* republic. But Mussolini was at that point no longer the man the world had known. The spirit of the Italian nation had departed from *Il Duce*. He followed German orders, going as far as having his son-in-law executed. By the end of his life, he felt himself to be little more than a walking corpse.

Lacuna

Allied propaganda reduced fascist ideology to the genocidal inclinations attributed to Adolf Hitler. In the years following the fall of the Axis, this perspective became cemented. The world did its best to forget that there had been a time when fascism seemed like liberal democracy's inevitable successor for . It denied that there had once been fascists of many races and creeds.

The achievements of Fascist Italy and Nazi Germany were thenceforth negated. The NSDAP's successes became viewed as the product of cut corners and long work hours. Experts agreed: Nazis could only thrive so long as they had territory to invade, and slaves to exploit. Italian accomplishments were deemed far less impressive in retrospect. The great leap forward attributed to Mussolini had been set in motion before he'd arrived. Fascism was nothing more than a political cult. It hypnotized the masses into acts of gross inhumanity by way of cheap spectacle. Fascist policy would never have been able to sustain itself. It required constant violence. Fascist ideologues were like travelling conmen, peddling false dreams. Their talk of a virile phoenix rising from the ashes of Liberal nihilism was all lies. In the years following the war, it seemed that the question of possible alternatives had been put to rest. Worldwide rational liquidation of cultural distinctions was the only viable option. Beyond the limits of Mass-Democracy, one would find only madness and death.

In time, the reasons for these determinations faded from public consciousness. If you do anything for long enough, it becomes second nature. You stop thinking about why you're doing it. It's no longer even a thing that you're doing - it's part of who you are. We no longer oppose Fascism as an alternative mode of existence that came to a violent end. We oppose Fascism because it's the thing we oppose. We support the things we support because they're the things we're supposed to support. Freedom, liberty, happiness - much like Fascism, these are empty terms, defined by the powers that be. The world is a formless mass that reacts in predetermined ways to stock signifiers.

Mass-Democracy is an artificial intelligence that has taken over the Earth. In truth it has been here for centuries, growing, and swallowing up culture. It is what happens when cold, automated patterns come to dominate over human will. The revolutionary movements of the 20th Century all recognized this process. Each, in its own way, attempted to reverse it. Liberalism sought revolution at the level of the individual, the rationalized individual neutered of all substance. Socialism sought revolution at the level of the universal. The universal, of course, is already in the realm of abstractions. It already speaks the language of depersonalized rationality. Fascism sought revolution at the level of the particular. It is what occurred whenever one group attempted to protect its substantive particularity from rationalized dissolution.

Fascism attempted to be the practical realization of the socialist ideal. Like Socialism, it sought to realize a collective ambition. Its ambition, however, was not to create a global commune of interchangeable comrades. Fascism sought to realize a distinct dream, of a particular people in a particular time and place. Liberalism dissolved culture into individual units. Socialism dissolved culture into the mass. Fascism aimed to *realize* culture; to bring forth a specific ideal. It attempted to breathe life into cultures grown stagnant.

Fascism as a *Named thing* attempted to revitalize western culture. Instead, the demise of Fascism acted as a hard limit to western development. One could no longer talk of pursuing racial, national, or cultural interests. To do so would be to arouse suspicions of genocidal intent. The post-war years were framed as an awakening of the human species to the next stage of evolution. It was to be a new era of universal brotherhood and technological advancement. In reality, the last 80 years played out like a reverse chronology of the last eight centuries.

First, Marxism gave way to Neo-Marxism. Revolutionary praxis gave way to endless discourse on various disenfranchised identity groups. One couldn't have a revolution until it was clear who most deserved to revolt. To unify the masses, Neo-Marxism created endless new divisions between individuals. It created new words to name the plethora of irreconcilable differences it revealed. Finally, every individual became united by a sense of alienation. At last, there would be a worldwide community comprised wholly of outsiders.

Next, Liberalism gave way to Neoliberalism. Great advances were being made in the field of cultural liquidation. Governmental institutions seemed a little too close to sovereignty. Better to base every decision on the whims of the global financial market. Religious institutions were a little too irrational for comfort. Better to hold faith in Neil deGrasse Tyson waxing poetic about quasars. The idea of having a family seems rather *tribal*, don't you think? Better to grow babies in vats on the other side of town. We understand that you still yearn for human connection. It's okay, we have drugs for that. We have pornography for that. Fetish objects proliferate by leaps and bounds. National pride, of course, is off the table. But we can take pride in our ever-expanding tolerance. We can put a Pride flag on the side of a cruise missile.

The Liberal subject becomes fractured by new technology and forced homogenization. At last, there are rumblings of Neo-Feudalism soon to

come. Vast corporate entities detach themselves from any particular people or place. They build company towns. They fund company militias. Companies withhold product from those who won't get with the program. Machines tend to oceanic industrial farms, overseeing production of soya and corn. What choice does the deracinated individual have? You were only ever taught to produce/consume. Dreams of a Jetsons future long-since expired. The world's wealthiest men appeal to you to eat insects and drink water made of recycled faeces. Talk of walled cities for financial elites as encroaching deserts rust the countryside. Nomads wait with baited breath to see if the market can figure out how to simulate a passable Neo-Dark Age.

The particular becomes subsumed under the generic. The historical becomes subsumed under the systematic. No longer does one speak of who we are, where we came from, or where we're going. Rather, one speaks in spreadsheets and tables of statistical data. One responds not to the demands of God or the nation, but to the demands of the market. Like water to fish, the full operational logic of this thing that we're in isn't clear. It frames our every interaction, it colours our every thought, and it dictates our every act. Life in the deluge is all we've known.

Even if one wishes to be a fascist, one must recognize the state of things. Racial and national identities have become shattered. The pieces have become scattered to the four corners of the Earth. Individuals inhabit gigantic multicultural land holdings, and struggle to connect with anything. The vast majority have become conditioned to take pride in their ambiguity. Many are unhappy with the present situation, but few know how to think different. Those who find unity in the land of alienation become themselves something alien. But all is not lost.

There was a time before Mass-Democracy, and there is a time beyond it. Do not allow these funhouse distortions to mislead you. The end of history is just another idea it's trying to sell to you. The Mass-Democracy disorients you with talk of individual freedom. It wants you to identify with it. Like an abusive lover, it wants you to feel like this is your doing. How much have you endured for this thing called freedom? Freedom signifies nothing. It is an empty space in which something might grow. You don't want freedom, you want something to *do*.

The meme flows through you, animates you, and informs your perspective. But you are not the meme. You are that which inhabits the meme, and embodies it. The meme is pure potential. You are that which

actualizes. You envision past and future as extensions of the living Now. Life is always in motion, yes - but you are this motion. You are not these echoes which surround you. You are not merely what you are rationalized *as*. These rationalizations cannot fully enclose this pulsating vitality Fascism as Meme calls out of you.

The point of revolution is not to enforce some rigid set of dogma. Revolution, if it's true, attempts to hear the whispers beneath the dogmatic repetitions. It attempts to reveal the still-beating heart of life beneath the worn out husk of cultural norms. When you fall in love; when you rediscover your passion; when you do revolution you remember who you are.

The Fascist revolution wasn't the result of intellectual theories or formal aesthetics. It resulted from recognizing the particularities of the historical moment. In contemplating Fascism, we do not desire to fixate on the echoes of moments long-since passed. We wish only to remember how to *listen*. Somewhere beneath the noise of ideology there is a voice that cries out. It is the Precambrian force which gives rise to all forms. It is that which remains unspeakable and unspoken, but nonetheless endures. It is the voice at the centre of all things, and it is speaking. The past is of tertiary importance. What matters is not what you've lost, but what you may still build. Come on, then. Avanti.

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Originary Technics

by Adam Katz

A paradoxical effect of the spread of writing was to produce a conception of the self as constituted by an inviolable interiority: the subject who speaks (really, reads and continues the "voice" of the text) silently to himself prior to any entrance into the social arena. This subject is not only pre-social, and therefore in a direct relation to God, the Idea, or Truth, but pre-technical and therefore the originator and user of technology from a position external to the technological world itself. Whether in the form of the subject of the free market or technocracy, this imaginary presupposes the possibility of mastery over technology, which, like the environment itself through technology, can be subordinated to purposes formulated within an intellectual space unaffected by the technology to be subjugated. This is why talk of the relation between humans and technology so often takes on the form of utopian projections predicated upon humans finally attaining absolute mastery over the machine world or dystopian nightmares in which the technology comes to master us.

There is a tradition of more sophisticated thinking about technology, including thinkers like Lewis Mumford, Gilbert Simondon, and Bernard Stiegler, which sees humans and technology as co-constitutive. If we can see humans and technology as "always already" interdependent and reciprocally defining, we can dispense with lurid fantasies and learn to take responsibility for ourselves as technological beings. I think there is a difficulty in doing so, though, that I've only seen Mumford address but in his case more, I think, as a "deviation" than a constitutive feature of technology: its intrinsically hierarchical and asymmetrical structure. It's easy to imagine technology being mastered by "Man" because some men are always mastering technology and through it other men. It seems to me impossible to imagine equal and spontaneous contributions to the technological order by all involved, which is why the only form of equality that seems imaginable in any detailed way in a technological order is that of equally "dehumanized" "cogs" of the machine. It's different in scientific, laboratory settings, where everyone can be

working on parts of a larger problem without anyone knowing in advance how any of the parts will fit into a larger whole—insofar as something is to be built, though, in a specific place, under the authority of someone, at a specific time, drawing upon materials and manpower that must be marshalled, the uneven distribution of leadership and power is inevitable—some one takes charge. We are dealing here with imperatives—which supports, I think, the claim that technology is prior to science, which really enters the scene when technology fails or needs supplementation, subsequently acquiring a degree of autonomy from direct technological application.

Here, I will proposing that taking a particular speech act, the imperative, as the origin of technology, will provide a powerful way of thinking technology and the human in a conjoined manner and in a way, furthermore, that sees technology as having an intrinsically ethical and moral component, rather than being a neutral phenomenon that takes on ethical implications only in the "uses" we "choose" to make of it. We can ask, why are there imperatives? The imperative, on the face of it, seems to be the human speech act closest to animal interaction: after all, while we don't see animals "explaining" things to each other, we do see one animal submit to another and do what the other wants. It would be easy to imagine that language originates with the imperative. But that would be to confuse exercises of dominance with meaningful linguistic acts: what characterizes an imperative is precisely that it can extend beyond the physical presence of both parties to the speech act and can therefore be delayed and transformed: the two parties must already "understand" each other in order to ascertain whether the imperative has in fact been obeyed.

This understanding must come before the issuance of an imperative, which means that the first speech act must institute this understanding—that is, it must be reciprocal and symmetrical, with all parties involved acknowledging that the sign issued by the others is same sign as the one issued by oneself. The most parsimonious way of hypothesizing the emergence of such a sign is as the conversion of another gesture but not quite sign into the reciprocally recognized one. So, we presuppose a common object, desired by all, with the desire of each mimetically multiplied by the desire of the others, so that the impossibility of any fulfilling that desire becomes apparent, in which case the gesture of appropriation, the grasping of the central object, is aborted, and converted into gesture of deferral, which means something like: the

being at the center wants none of us to have it. This is the originary hypothesis proposed by Eric Gans, which I think I can assume just about anyone reading this has some familiarity with. This first sign is an "ostensive" sign, which means it says nothing "about" anything, it just indicates and preserves mere presence. Think of the kinds of expressions we use to alert others to an emergency situation—"fire!"; "man overboard!"—and you get the idea. Before anything can be done or examined, our attention must first of all be fixed on this thing.

In the sequence of the emergence of the speech forms, as hypothesized by Gans, the imperative follows the ostensive. In that case, we might say that technology, insofar as we derive it from the imperative, is not quite co-originary with the human, which we take to be founded with the ostensive. But the Being who will issue the imperatives around which the increasingly complex human community will be organized has already interposed its will between the community and its object of desire. Still, this Being does not issue the first imperative which, according to our hypothesis, was the result of an "inappropriate ostensive": someone proclaims or "signs" the name of some object in its absence, and his interlocutor fetches it: since this can be repeated, we have a new speech form, which can be issued deliberately. The imperative speech act is an intrinsically asymmetrical one, even if not in any obvious way: pleading, praying, petitioning, and so on are also performed through imperatives, by a subordinate or, at least, the weaker party in that case. There is another feature of the imperative worth noting here: since the performance of the imperative must conclude with an ostensive acknowledgement or affirmation by the "imperator," the imperative further implies a relation of supervision and, even more, instruction or pedagogy—to see that the imperative is carried out as ordered requires, eventually, that the one issuing the order walk through it step by step, repeatedly, with the one to carry out the order—this is at least always an implicit possibility in any imperative. Here is where I would locate the origins of the technical—in this intimate, fallible, highly interactive instrumentalization of one party by the other. And we can already detect an ethics of the technical here: this kind of intensive pedagogy has the goal of enabling the "recipient" of the imperative to carry out the imperative with ever diminishing supervision, precisely so that the range of imperative ordering can expand.

Since the ritual center, the materialized memory of the originary event, is by far the most important element of communal life, whether the

imperative emerged on the ritual scene or not it would quickly become a prominent feature of the scene. That is, the center would become the source of imperatives. The nature of these imperatives would be to construct the ritual scene in such a way as to solicit further imperatives from the center, and to submit imperatives to the center in turn. Everything that serves the community—sources of food, shelter, victory over other groups, but above all the minimizations or elevation of conflicts within the community itself—is a gift of the center. It is the center or, if we want to "demystify" a little, those capable of listening authoritatively to the center, that secures all these benefits. In exchange, the center wants a part of the goods of the community, like a part of the buffalo meat that the buffalo god/ancestor has provided us with. The logic of human community, until very recently and least residually still, is sacrificial. But the imperatives of the center also concern the structure of ritual, which is very important, because it is through ritual that the group enacts the events that have formed the bond between the community and the central Being, and this must be done very precisely to avoid offending the gods and maintain the relationship of imperative exchange: the will of the gods can only be heard through the structuring of ritual.

The imperatives from the center under a ritualistic order, then, are overwhelmingly concerned with what we could call the design of the ritual scene. This would involve the use of natural objects, the manufacture of specialized objects, and the arrangement of members of the community on the scene in specific ways. The emergence of technics, on this account, is the development of this imperative exchange between the community and the center: the community petitions the center for help, and the center commands certain practices in exchange for such help. This help is not always forthcoming, or easy to recognize, which generates narratives of happenings on the central stage, which becomes densely populated with mythic beings whose stories are told and woven into rituals. Insofar as activities organized primarily through imperatives takes place off the ritual scene (hunting and gathering, warfare, etc.) it will be modeled on the ritual scene and likewise "covered" with ritual and myth—and, with the kind of pedagogical or apprentice-like relation I said above must accompany the imperative speech act from the beginning. This is "technological" in the sense that implements are created and used, but also in the sense that the ritualized order is a way of making things happen in a broader sense: it "conjures" relationships and actions into being. When modern artists

like Richard Wagner aimed at creating a "total work of art," it was the totalization of the ritual scene they were hoping to recreate on modern terms.

The construction of specifically human tools itself depends upon the ability to represent a series of steps, which in turn depends on the capacity to narrate, and therefore upon the fully developed language we find in the declarative sentence, with a subject and predicate, suited for describing things out there in the world. The declarative itself, in Gans's hypothetical deduction of the sequence of speech forms, is tightly bound up with the imperative: to keep it simple, for now, we can see the origin of the declarative in the countering of one imperative with another incompatible with it, with the subsequent reconciliation of the two in a "reality" that includes them both and that neither party can control. If you ask me for a knife, and I say something like "knife went," and you, rather than aggressing against me for "disobeying" your command, accept that the knife isn't there (which in an imperative world could only be represented as the knife being commanded to be elsewhere), we have a declarative sentence, insofar as we can refer to something absent. The declarative allows for the representation of a sequence of acts, for correction, and for recourse to models to measure one's work against. It allows us to construct, in advance, a stereotyped sequence of events in which the request for a knife will always lead to one being provided. The imperative can continually be prolonged, so that the request for a knife can be extended into the command to create a knife, and to do so in accord with certain procedures and in accord with precise specifications. The imperative, in this case, is issued from a higher level in the social order and is split and "delivered" to its "imperatees" through an increasingly complex set of relays. To demand a knife becomes the demand for the production of knives in a regimented manner as well as the demand to produce those who can make and use knives. With the ever expanding design of the scene, the designers are themselves designed in such a way as to sustain the system of design.

For imperatives to be issued from a higher level within the social order there needs to first be a higher level of the social order. This can only be the case once the ritual center is occupied by a human, who seizes or usurps it in what would have been the first "revolutionary" act in human history. The first to do this was the adventurer anthropologists know as the "Big Man," but the Big Man, through a long history we need not address here, becomes the sacred king and some of the sacred kings

become "God-Emperors," ruling over vast territories and peoples, in a more or less divinized form. The sacrificial center continues to exist through these transformations, but it gets weakened and pluralized—the imperial subjects may bring their sacrifices, whether cattle or first-born children, to the temple in the capital, once a year, but otherwise they will be engaged in exchange with local and familial deities. Even more important, with the rise of the gigantic empires, we see the creation of masses of people conquered, enslaved, and torn out of any relation to the sacred. These slave armies can be completely and mercilessly "instrumentalized," in the form of what Mumford called the "mega-machines" of antiquity, and which probably represent the first approximation to what we would readily recognize as "technology": extensive division of labor applied to projects well beyond the capacity of individuals or small groups. From this initial technology, predicated upon total command, we can derive the axiom that all technology is governance. Within any technological order, the machines will be modeled on and complement the activities of human collectives, while human collectives will be modeled on actual or possible machinic articulations.

My hypothesis here, then, is that the bursting of technology beyond the bounds of ritual that we have seen since, say, the Renaissance, can still be described as scenic design without the ritual scene. The breaking of ritual constraints is equivalent to the weakening beyond repair of the sacrificial order, which is to say the absence of any sacrificial center. All the engineering feats and the reconstruction of society around massive systems of sensing, measuring, energy extraction, refinement, circulation and deployment in various forms of automated movement and, now, the enormous data collection and algorithmic ordering that commands all the rest, can still be described as the ongoing perfection of a system of imperative relays constructing a scene in which any transformation in one section of the scene "demands" some corresponding transformation in others. Those who design technology are quite literally, if indirectly, telling others what to do: you must go from one place to another, and you must do it in one of these several ways. There is always a tendency to reduce the options so as to optimize the system imperatives. The most perfect technology, in that case, would be one in which the designers at various levels would compel a single activity from each subsequent or simultaneous operator all the way down to the end user. These single activities might be quite complex and require a high level of skill, discipline and concentration to complete.

But if there is no more ritual center, on whose behalf, in what system of exchange, is all this frenzied building taking place? The answer is simple: on behalf of that which replaced the ritual center: the state. And since states serve no sacred order higher than themselves, but are rather subordinated to a ever evolving and incoherent set of imperatives deriving from such demands as "democracy," the "will of the people," "liberty," the "constitution," "human rights," "equality," "health," "the market," and so on, the gathering power of the state drives technological advance while simultaneously providing scope for all kinds of sabotage. That technology can be both a "bane and a blessing" is a commonplace, but perhaps we can move beyond that and beyond humanist invocations of the need to "choose" (as if Humanity is a deliberating agent) according to some vaguely specified but likely residually sacrificial mode of morality. How do we even say whether a particular technological development is "good" or "bad," "harmful" or "helpful," or a bit of both? Today we see disputes over whether this or that innovation is even "real." Rather than reiterating the demand (issued by and to whom, exactly?) to make "technology" conform to this or that externally established standard, we would do better to think through technology as scenic design and the perfection of the imperative within the framework of technology as a form of governance within which we are all always already designed and designers, albeit in ways that are highly differentiated and asymmetrical.

I would begin with the simple question of how one knows one has done something. If you paint your house, but it rains immediately after and washes all the paint away, you haven't really "painted your house"—that is, painting your house includes, as a practice, accounting for the conditions under which the paint will stay on the house. So, we can think of a practice as an activity that includes the criteria for determining whether the activity has been carried out and completed not only as planned, but in a way recognizable to others familiar with the norms and expectations governing that activity. Here, of course, I'm speaking in a way deeply indebted to Alasdair MacIntyre and, through him, thinkers like Aquinas and Aristotle. So, I'm participating in the retrieval of the kind of "virtue ethics" demolished by modernity. MacIntyre includes more in his understanding of what a social practice entails, such as the narration of one's activity as part of a tradition that one participates in knowingly, carrying it forward and revising it, as well as the practice being one that presupposes and contributes to forms of exchange and collaboration within a community. I would slightly revise this tradition

by bringing it to what I think is a finer point, and one only conceivable under technologized conditions: the marker of the further perfection of your practice is the selection, more or less explicitly, depending on the practice, of the successor of your practice, the one who will continue and further perfect it. In that case, the question of a successor (and a predecessor) is built into the practice itself—you could define a practice in terms of the singularization of the one who will succeed it. Succession is, again more or less explicitly, always staged: in your practice you seek out, contract with, audition, train, create pathways for, the one (you always want to narrow it down to one) who will succeed you. Even more: you want to select the one who will in turn be best suited to select his own successor, and in turn his own successor, and so on. The foundation of any practice, in that case, is what I am calling "singularized succession in perpetuity." Whatever is involved in considering the conditions that might prepare a wide enough range of suitable candidates, available resources, training, public recognition and acceptance, even participation in practices of succession—all that is part of the practice, however important it might be to explicitly thematize one element or another.

This understanding of practice implies a particular kind of social order, one in which precisely this kind of continuity is staged from the top down, so that a central and particularly visible part of governance is practices of succession carried out by whoever is responsible for maintaining the entire system of succession. After all, if governing is a practice, and to be genuinely governing involves issuing imperatives that are obeyed in ways that are recognizable as the imperatives actually issued, then the most certain way to ensure that governance is enacted is to have the practice of succession in the hands of the governor: if someone else is to choose the successor, then whoever that is has ample means for interfering in ongoing practices of governance. Only a ruler who can see to the continuing perfection of his practices of rule in perpetuity can be said to be ruling. Ruling involves ruling through technology, so it is ordered governance, which means continuity at the center, which comprises scenic design. In this way, we can also account for a post-sacrificial center, which is to say, a center to which the ruler is obedient but which nevertheless cannot be deployed by saboteurs to undermine his rule for "non-compliance" with it. Singularized succession in perpetuity obeys the primary imperative, rooted in the originary event itself, or "linguistic presence," to ensure the continuity of the center and the alignment of the community with it. Meaningful

practices are meaningful in the literal sense of being linguistic enactments which offer "proof" of the words, sentences and texts one produces in the constellation of all around the center implicit in the completion and succession of one's practices. This entails enacting the social roles privileged by the community, whether they be familial, occupational, or civic, and all of which, if not having one true, fixed meaning, are constituted by a set of possible "falsifications" and "verifications" that qualified observers can respond to from within their own practices. The sacred is rerouted to the significant—doing things that mean something in the sense that someone could follow up on them in ways that you would recognize as a follow up—which it was always conjoined with anyway.

There is nothing utopian in this social logic because it also describes what everyone is already trying to do, even if it tends to be most explicit in families where parents want their children to grow up to be more or less better versions of what the parents imagine they'd be growing up to become under those conditions, and to have children who in turn... Political leaders, in proportion to their strength as leaders, select and promote successors who will continue their agenda; any conscientious worker in any industry whatsoever wants to attract and train those who will continue and improve the work; an artist wants to establish a new tradition of that kind of art, or to continue in such a way that will enable others to continue, that form of art, and so on. In fact, it is bureaucrats who are least able to stage succession because they must display obedience to anonymous procedures that explicitly take such staging out of their hands—so, they can only stage succession in underhanded ways. So, the best way to participate in the imperative order is to exemplify, encourage in others, and make more explicit singularized succession in perpetuity. I haven't emphasized this, but such practices also involve some form of homage to one's predecessors, those whom one has been selected by, or whom one wants to prove oneself worthy of being retroactively "adopted" by. This theoretical approach won't necessarily tell you directly what do with or about Twitter, Facebook, Google, Apple, etc.—such a theory is more for readying you to listen for imperatives than to issue them. But I would issue the soft imperative to, even if it goes against the grain, embrace the narrowing of options I suggested above: whatever you are building, you want it to be the one thing you need to build in order to obey the command to install singularized succession in perpetuity across the social order—and, you want what you build to issue such a command as well, broadcast and

ramified as far as you can send it. Imperatives that are built to last will narrow things down but also open things up, insofar as the imperative interferes and is interfered with by others, requiring continual hypothesizing and refinement. (This also means that if you're wrong, you're generating the practices that will reveal that.) It's hard to imagine anything more powerful than participating in a command structure traceable back to the origins of humanity and stretching forward to indefinite human continuance, nor any more compelling program of study than to identify everything worthy of continuation in our practices, and what perfection of those practices would most likely ensure that continuation. Rather than standing outside of technology and determining what use we want to put it, we participate in technology as a mode of revelation of our planetary destiny.

The American Legal Landscape

by **Frederik Boreas**

It was said by Tocqueville that all political questions in the US are sooner or later resolve into judicial questions. The legal process, the Supreme Court and a mythological regard for the constitution play a central role in American politics. Inherited from the British, the concept of the "rule of law and not of men" has defined American politics and granted its legal system a certain centrality. A key contention of the Presidency is always the power appoint justices to the supreme court. Conservatives will tell us that it is paramount that 'originalist' judges are appointed to the court to ensure conservative values will be upheld, while liberals will argue that 'living constitutionalists' should be appointed, so that the law conforms to contemporary moral standards (whatever that means). As such, any attempt at dealing with American politics must be able to deal with the question of law and the role of the Supreme Court. In this paper, I will begin to approach this question by presenting a political and structural logic of the Supreme Court and the Judiciary at large. If we take this logic seriously, we must understand the judiciary as an independent political actor with perennial interests that

are pursued regardless of whether or not the court is dominated by conservatives or liberals.

Furthermore, the judiciary is the epistemic center of the American political system as it formalizes in objective legal terms interpretative disputes. The judiciary should not be viewed as mere function of democratic process as though it can be controlled by simply ideologically re-staffing it, it is an institution with its own political goals. This view of the judiciary as a structural actor in American politics sees in it the ambition to create a formalised system of objective legal application, whilst at the same time recognizes that it molds the law instrumentally so as to allow the judiciary to maintain its position at the center of the American political order.

Part 1. The Judiciary, Legal Theory and Federal Positioning

A Federal Court

The supreme court is a part of the federal government, so it is logical to conclude that the court will always favour federal expansion to the detriment of the states. That this is not obvious to most is partly the result of the view that the actions of the court can be explained by the political ideologies dominant on the court. It is nonetheless the case that the federal judiciary has been on a constant track of expansion since its creation. This has been documented extensively in: *The US Supreme Court and the Centralization of Federal Authority* by Michael A. Dichio.

The most interesting finding of Dichio's study is that of the 624 landmark decisions in the period 1792-1997, 60% expanded federal authority, which is a persistent pattern even when broken down into smaller periods. Dichio makes the point that central state power in the US should not be assessed in reference to a Weberian-style welfare state. This clouds the extraordinary power which the federal government in the US possesses, a power that the court plays an active role in expanding. When Dichio talks about central state expansion, he is talking about an expansion of jurisdiction and supervisory powers. Central state expansion in the US is not based on expansion of a bureaucratic administration, but the raw expansion of supervisory powers and

extension of jurisdiction to all areas of policy whether it be education, civil rights or economic regulation.

Authority is not mere administrative capacity for Dicho, but the justification of intervention and review. Judicial power centers around pronouncing judgements under the guise of legal objectivity, which grants them the right of interference. As such, legal power is most fundamentally epistemic, it centers around the ability to pronounce truth or falsehood, legality or non-legality. Review is the epistemic power of the judiciary, as the judiciary's fundamental role is to justify and rationalize someone else's right (or lack thereof) to do something. The point of this is not merely to resolve disputes, but to institutionalize normative expectations, and so the judiciary must bring everyone under a formal epistemic framework within which they can form predictable review.

The Supreme court expands federal authority by either invalidating a state/local law, or by affirming a federal law. More often, federal expansion comes through invalidation of local laws. Naturally, the court will also restrict federal authority at times, but that should often be read more as an attempt at battling other branches of the government and not as a genuine attempt at federal restriction. The way that the court positions itself in the federal government is largely a question of where to locate certain authorities, and restriction of federal authority can often be read as an attempt at positioning itself against congress or the executive.

Dicho also found in this study is that centralization is stable and persistent from the founding of the constitution to this day. There are no large deviations in expansion, and the narrative that the New Deal represented an anomaly of expansion of federal authority must be dismissed. The last of the big macro-findings is that when broken down into constitutional subject areas, civil rights and economic activity have been the biggest vehicles for central state expansion.

It is fair to say that the early critics of the constitution were absolutely right that central state expansion was built into the constitution, to the detriment of the states. To go even further, we could say that the civil war was built into the constitution. The founding fathers must have known that the constitution left many areas in the grey and that the ensuing conflicts between the states and the federal government had to be

resolved. The judiciary was set up as the arbiter of these struggles, but as Jefferson knew, the court would never be a neutral institution.

To briefly sketch the logic of why this federal expansion has taken place through the courts, we must understand that the strength of the judiciary is tied up to the strength of the federal government. The judiciary doesn't enforce its own decisions, so to even have the rule of law, the courts have to rely on "law-enforcement", and this necessitates a strong federal government. Naturally, the federal judiciary is interested in using whatever influence it has in the federal government to exert control over important issues. As shown, economics has been one area where the judiciary has had massive influence and this control of economics is something that, as we shall see, the court has clinged unto throughout its entire existence.

When we look at the judiciary as being part of the federal government and its positioning within it and the country at large, we must view legal theory through this prism, and that is what i will present in this historical excursion on legal theory. Now that we have this macro-view of the court in mind we will turn towards the three big periods that constitute american history, the antebellum period 1780-1860, the post-civil war and reconstruction to the New Deal, 1860-1930, and the New Deal until today.

The Antebellum Judiciary, 1780-1860

The young nation that emerged after the revolution and was unified under the articles of confederation faced a large host of problems. The massive war debts had to be payed off, but the articles of confederation had left the union weak and without the ability to levy taxes, while the states were not cooperative. These are the issues that the constitutional convention set out to solve in 1787.

Present at the convention were two broad groups that had to compromise. Federalists, like Alexander Hamilton, wanted a strong central government with complete authority over taxes, commerce, and defense. While on the other hand, people like Roger Sherman wished for small government and strong state sovereignty. The constitution was a result of a compromise between these factions, but it is fair to say that the federalists won in the end.

The constitution had within it a tension between state sovereignty and the national government. The border between these two authorities was sufficiently vague, so that the inherent tensions had to be resolved by the supreme court, which favoured federal expansion. This is not something people were wholly unaware of though, which is why the court was in quite a precarious situation at its establishment. Many voices lashed out at the concept of an independent supreme court. Brutus, a congressman writing under a pseudonym, said; "There is no power above [judges] to control any of their decisions. In short, they are independent of the people, of the legislature, and of every power under heaven. Men placed in this situation will generally soon feel themselves independent of heaven itself".

Thomas Jefferson furiously hated the supreme court, anti-federalists understood that the federal judiciary was the primary branch that would enable the centralization of power from the states to the federal government. This prompted the court to be extremely cautious in the early years of the republic, rejecting all extra-judicial powers offered to it and establishing a norm of refusing to issue advisory opinions to the executive.

The first supreme court was a court that was in no way popular, and it had to legitimize and assert itself. This led to battles with the Jefferson administration, which will be covered following this, but the court weathered this storm and the judiciary at large was able to focus on other matters. However, before we delve any deeper into what drove the antebellum judiciary and the process of legitimation, we will first take a look at the overall pattern of decisions from this period as Dichio presents it.

From 1792-1864 there is a total of 136 major decisions, and of these, 57.4% expanded federal authority. When broken down into subject-areas we see that issues of economic activity, federalism and taxation were the key areas for expansion of federal authority. Of the 38 cases regarding economic activity 62.2% expanded federal authority, the cases related to federalism expanded federal authority 68.2% of the time and taxation issues at a whopping 100%. It is important to remember though that only 3 cases related themselves to taxation. Nonetheless this period is marked by a massive expansion of federal authority in economic matters, but especially judicial influence on economics in general as we shall see.

As mentioned before, the judiciary understood that it was in a precarious position and there is one pattern of this period which clearly shows this. Of the cases related directly to judicial power, the judiciary actually broke even in restriction and expansion at 47.2% each while 5.6% were seen as neutral decisions. This clearly shows that the judiciary understood that it had to be careful not to overstep its boundaries in its wider political relations. Besides, this period is also characterized by the mounting sectional conflict between the north and the south, which would mean that the judiciary would have to be especially cautious. In terms of regulating the economy though, the judiciary was quite bold. Before looking at the judiciary and its economic aspirations, we will look at the process of legitimation of the judiciary which is exemplified in the battles between President Thomas Jefferson and Chief Justice John Marshall.

Jefferson and Marshall

To understand the conflict between Jefferson and the supreme court, we have to appreciate the transition of power that took place when Jefferson was elected president. Prior to Jefferson, the federal government had been dominated by the federalist party who were in complete control of all three branches. Jefferson had himself been a part of the Washington administration and vice-president under Adams, but in all these years he had always felt alienated by the two presidents because of the influence of Hamilton and his radical federalist ideology which didn't harmonate well with Jefferson's southern sentiment and republican world view. During the Adams administration the federal government had engaged in persecution of anti-federalist voices through the sedition and alien acts of 1798, which gave broad powers to squash dissenting voices. The federalists used these powers liberally, persecuting James Callender, writer on the *Richmond Examiner*, Congressman Matthew Lyon for his essay in the *Vermont Journal*, Benjamin Bache, editor of the *Philadelphia Aurora* and many other prominent Democratic-Republican writers who challenged the policies of the federal government.

These actions naturally sparked outrage among many Americans, especially Jefferson, and the complicity of the supreme court in these prosecutions, namely Justice Chase's federalist sentiments that became apparent in his handling of these cases, left Jefferson with no love for the court. Jefferson expressed his ideological view of the court through his

compact-theory of the constitution as seen in the Virginia and Georgia resolutions of 1798, which stipulated that the union was a compact of states and that it was up to the states to pronounce judgment on constitutional matters. This would naturally make the supreme court superfluous and this is what Jefferson wanted to do with the Supreme Court.

The attempts at squashing dissent by the federalist party only helped Jefferson's election and the republican "revolution". The Republicans won convincingly and took control of congress and the presidency, but as the federalists realized their defeat, they made sure to retreat into the judiciary. President Adams stacked the federal judiciary just before leaving office, passing the judiciary act of 1801, which created an extra layer of circuit courts, staffed with federalist judges as well as appointing John Marshall, then secretary of state under Adams, as new chief justice of the supreme court.

As the republicans took power, many naturally wanted some kind of revenge and the first of this kind would be overturning the judiciary act. Apart from shrinking the size and reach of the judiciary through this overturning it also returned the court to the nuisance of circuit court riding. Prior to the judiciary act, supreme court justices had to travel around the country to adjudicate cases and they were severely limited in their reach and efficacy. Besides, travelling at this point in time was a hazardous task that exposed the justices to many dangers. The supreme court and the federal judiciary was now severely limited in its power and had to be very careful in its conduct. It turned out that Chief justice Marshall was competent for the task, but before he could show himself the hurdle of revenge had to be overcome.

The Jefferson administration switched focus to impeaching Federalist judges and first judge to fall was justice Pickering, a US district judge, who turned out to be an easy target because of his alcoholism and mental problems. Pickering was impeached and removed from service, but Jefferson and the republicans had their eyes on a bigger prize; Justice Chase of the supreme court. Chase had given himself a bad show during the sedition trial of James Callender, where he allegedly committed procedural errors and other cases where he uttered overtly partisan political remarks. This case was of massive importance, because if one justice could be impeached, what was stopping the republicans from impeaching Chief Justice Marshall himself?

Chase managed to survive the trial, being acquitted of all the charges, setting the precedent that partisanship is not enough to impeach a justice. Chase became the first and last supreme court justice to go through impeachment, his trial made sure that impeachment of justices would become incredibly hard in the future. But also, the impeachment trial demonstrated the degree to which the republicans wanted to purge the federal government of federalists as well as their attempt at weakening the judiciary, which they saw as a major threat to their power. Had the federalists not managed to defend their retreat into the judiciary we might not ever have had the strong supreme court that we know today. During the federalist governments, the court was lowly in status and largely did the bidding of the executive and legislative branches. The new political order necessitated for the court to assert itself, and so the impeachment of Chase was incredibly dangerous to the independence of the court.

This marked the inflection point after Jefferson enjoyed some initial success in curbing the supreme court through his overturning of the judiciary act and the impeachment of judges. The federalist supreme court retaliated through a string of cases that would curb the power of the executive and legislature. Chief among these was *Marbury v. Madison* (1803), which arose as a direct result of President Adams last minute judicial appointments.

It turned out that secretary of state James Madison was in possession of the commissions of these new judges, but Jefferson ordered him not to deliver these commissions despite the fact that these judges had already been confirmed by the old senate. Jefferson believed that these commissions were void because they hadn't been delivered in time, but this made one of the judges, William Marbury, file a lawsuit on the supreme court demanding that these commissions be delivered. Chief Justice Marshall naturally had to be very careful in this ruling, if he demanded that the administration turn over these documents he could expect harsh retribution, but if he did nothing he would be considered a traitor to his federalist allies.

Marshall managed to steer a moderate path by ruling that Marbury's case was just and that Madison should not have deprived him of these commissions, but that the supreme court had no jurisdiction to issue a mandamus in this case. This might seem counter-intuitive to the interests of the court, but Marshall used this last part very skillfully, by

saying that "it is emphatically the province and duty of the judicial department to say what the law is". Marshall had concluded by interpreting the constitution that he didn't have jurisdiction in this case, but he used the case to establish that only the supreme court had access to constitutional interpretation. This is critical, because prior to this, the constitution was somewhat open to every branch of government, but Marshall made sure that the court would be reserved exclusive rights to rule on constitutional matters. This is something that is taken for granted today, but without Marshall's ruling this might not have been the case.

Marshall's ruling was therefore an implicit challenge to Jefferson's compact-theory of the constitution, where sovereign states could pronounce judgment on constitutional matters. Another tricky point in this case was what seemed like a denial of judicial review that actually achieved quite the opposite. The supreme court had come to the denial of their own jurisdiction through interpretation of the constitution, which made them strike down parts of the judiciary act of 1789, which they saw as unconstitutional because it gave them the power of judicial review, not stated in the constitution. But of course, this act was passed in congress and so, by striking it down, the court had given itself the power to review legislation by denying their ability to review legislation. This was part of the exclusive right of interpretation that Marshall claimed for the court.

The subtle genius of the move was that it effectively ruled that federal courts have the power to refuse to enact congressional legislation that they do not deem to be consistent with their interpretation of the constitution. This was a highly skillfull slight of hand. Marshall and the court had succeeded in giving the appearance that they were limiting their own power by denying their own jurisdiction in this case, but they had actually massively increased the scope of judicial power against congress and the executive.

A second case where Marshall would succesfully combat Jefferson, was the Aaron Burr Conspiracy trial, where the former vice-president was acused of treason. Burr was acused of attempting to establish an independent country in the southwest and intending to conquer Mexico with it. Burr had been vice-president during the first Jefferson administration, but their relationship had soured quite badly and Jefferson was adamant in his desire to see Burr hang for this alleged

conspiracy. When it came to proving this conspiracy though, the prosecutors were struggling. The chief witness against Burr was General James Wilkinson, but Wilkinson had himself been a key part of Burr's conspiracy. Wilkinson had written Jefferson with the accusations against Burr, which Jefferson saw as proof enough, but when Wilkinson appeared as a witness he had to self-censure to hide his own complicity in the case. This made the prosecution quite weak and everything naturally hinged on the written correspondence between Jefferson and Wilkinson. This allowed for Marshall to issue a subpoena against Jefferson, demanding that he hand over the papers. Jefferson naturally refused to do so, but the case against Burr fell apart because of this lack of evidence and Marshall ruled that the court had the right to subpoena the executive regardless of whether or not Jefferson wanted to comply.

Much to the dismay of Jefferson the court had managed to successfully assert itself and its place in American politics, by achieving the power of judicial review and the ability to curb executive privilege. After Jefferson, Marshall and the court continued to assert its power, and despite the court being stacked with nominal democratic-republicans during Jefferson's successors, the court still continued its track of federal judicial expansion. The anti-federalist democratic-republicans had achieved complete control of the federal government and all its branches, but there is no point in being anti-federal when you control the federal government. The federalist ideology ironically lived on in large parts of the democratic-republican party and especially on the supreme court.

The Instrumentalization of Law to Economic Ends

From a larger perspective we have seen that the Supreme Court expanded federal authority in 57.4% of its cases in this period, and that it happened primarily through cases related to commerce and economics. To show how the courts exercised this massive influence on economics, we have to look at the new view of legal theory and economics that arose in this period, which can only be characterized as an instrumental view of law.

Morton J. Horwitz argues in *The transformation of American Law (1780-1860)* that this period is characterized by an alliance between the judiciary and the burgeoning mercantile elite. Furthermore, he shows

that the concept of laissez-faire economics only serves to hide the fact that the state does intervene in economic affairs, only, it does it primarily through the legal system and not through the tax-system, which is what is often implied when talking about state interference in economics. Horwitz's work is clearly inspired by Marxism, as such, he reproduces highly questionable Marxist notions of economic determinism. Nonetheless, his argument about how the legal profession engages in regulation of the economy is compelling, and allows for a unique view of the legal profession as an agent that conditions the direction of the economy.

Instrumentality

One of the most important intellectual developments in the jurisprudence of this period is the rise of the instrumental conception of common law, breaking from the traditional notion of 'Natural Law'. This wasn't a total rejection, but the idea of natural law was profoundly altered. Instrumentalization wasn't an explicit school of thought, but more of a general mood and perception that arose as evident in the legal reasoning of the time. Many of the decisions of this period are incomprehensible without recognizing this.

The traditional notion of natural law that dominated legal discourse prior to the 19th-century was fundamentally conservative and anti-developmental in its outlook. Natural law was a set of abstract principles from which absolute truths could be deduced. This tradition saw law as something to be discovered or Divinated, it was always realized in a well established and customary manner. Natural Law was simply considered to be the method of uncovering truth in law and so there could be no development, law could not be created in such legal practices.

The main difference between the instrumental conception of law and the natural law tradition was the perception of the role of the judge. The old natural law tradition did not believe that judges played a central role in cases, they merely carried out the self-evident principles of the natural law, it was not their job to engage in complex considerations of social policy and change. On the other hand, the instrumental conception saw law as a means to an end. Law was to be used to advance social change and economic growth, and the judge now had a responsibility to promote change and progress and carry out the will of the people. This alteration came about through a complex set of

discussions about the nature of common law and the role of the judge in common law adjudication, as well as a very tangible practical necessity for economic development in a country that shunned state meddling in economics through the tax-system.

Around the time of the revolution, no one considered it a problem to adopt the common law framework and English precedent:

"The generation of Americans who made the American Revolution had little difficulty in conceiving of the common law as a known and determinate body of legal doctrine. After more than a decade of insistence by political writers that "grand basis of the common law" was "the law of nature and its author," it is not surprising that the first Continental Congress in 1774 should maintain that Americans were "entitled to the common law" as well as to English statutes existing at the time of colonization. [...] Between 1776 and 1784, eleven of the thirteen original states adopted, directly or indirectly, some provisions for the reception of the common law as well as of limited classes of British statutes. In light of the attacks on the common law that began to appear within the next generation, it is remarkable that the revolutionary generation saw no difficulty in establishing the common law as the rule of decision in legal controversies." - Morton J. Horwitz, *The Transformation of American Law, 1780-1860*.

There was no doubt in the revolutionary generation that the common law and natural law framework was the right one. The later criticisms that arose in the post-revolutionary generation were unthinkable at the time and there was a certain mythological regard for the principles of the common law. However, there were discussions at the time as to the reception of statutes and their relation to the common law. The common law framework and its grounding in precedent and natural law was preferred over statutory law, because it was believed that it best served to curtail the power of judges and because it had less reminiscence of British rule in the colonies. This is fairly ironic considering that the inability of the common law to restrain judicial power later led to massive criticism.

The conceptual difference between statutes and common law at the time was, as Horwitz put it: "In short, common law doctrines were derived from natural principles of justice, statutes were acts of will;

common law rules were discovered, statutes were made". Statutes were seen as acts of will of a sovereign, and the revolutionary generation associated the "will of the sovereign" with english tyranny. Statutes were acts of will and therefore not dependent on natural principles or reason. The common law was supposedly discovered not created. The notion that these principles, once discovered, were self-evident meant that it was inconceivable that the common law judges could manipulate the general principles and vagueness of precedent to tyrannical ends.

The idea of self-evident common law principles came under heavy scrutiny in the early 19th Century where critique initially centered around issues of crime. The Supreme Court declared in 1812 that no conviction of a federal crime could happen without a statute. This brought to attention the fact that common law judges had extraordinary discretionary power in their adjudication and that without a statute any conviction would be completely arbitrary because of the vague generality of the common law. Common law crime adjudication without statutes simply left too much power in the hands of judges. This was a devastating critique because it not only undermined what had made the common law preferable in the first place, but also because it instantiated a fundamentally different jurisprudential conception.

Common law was no longer seen as a set of self-evident principles, but as contingent man-made rules. Law is something that man creates, and it is not derived from divine will or reason. These criticisms meant that common law proponents had to reinvent themselves, leading to the instrumental conception of law through appeals to popular sovereignty. Revolutionary America generally had an ambiguous relationship towards the idea of sovereignty. The idea of a single and indivisible sovereign was criticized because, as mentioned, it reminded everyone too much of british tyranny. Nonetheless, the idea of the one indivisible sovereign was accepted, only this sovereign was 'the people':

"As much as they attacked the Blackstonian conception of a single and indivisible sovereignty, Americans after the Revolution began widely to accept the modern theory of law underlying that conception. While they disputed the supremacy of parliament, they simultaneously argued that written constitutions were legitimate because they embodied the "will" of the people. And as they sought to redefine the basis of legal obligations in terms of popular sovereignty, they

tended to assert the ultimate primacy of the legislature and of statute law. The result was that the original natural law foundation of common law rules began to disintegrate." - Morton J. Horwitz, *The Transformation of American Law, 1780-1860*.

It is exactly this idea of popular sovereignty that saved the common law, even though the idea of popular sovereignty led many people to demand a total statutory codification of law:

"If the principle of popular sovereignty seemed to some to lead logically to complete legislative codification, orthodox legal writers like James Wilson sought to show instead that the common law power of judges was entirely compatible with the sovereignty principle. The emphasis in postrevolutionary legal thought on the consensual foundation of the common law was thus designed to demonstrate that common law judges actually constituted the "trustees" or "agents" of the sovereign people." - Morton J. Horwitz, *The Transformation of American Law, 1780-1860*.

This paved the way for an instrumental conception of law where judges saw themselves as carrying out the general will of the people. Because the law was carried out on behalf of the will of the people, will rather than reason began to be seen as the basis for law, rationalizing the common law as an instrument of the will. Judges could claim legislative power, something unthinkable only a few years earlier, and they would use this to drive economic growth and change:

"By 1820 the legal landscape in America bore only the faintest resemblance to what existed forty years earlier. While the words were often the same, the structure of thought had dramatically changed and with it the theory of law. Law was no longer conceived of as an eternal set of principles expressed in custom and derived from natural law. Nor was it only regarded primarily as a body of rules designed to achieve justice only in the individual case. Instead, judges came to think of the common law as equally responsible with legislation for governing society and promoting socially desirable conduct. The emphasis on law as an instrument of policy encouraged innovation and allowed judges to formulate legal doctrine with the self-conscious goal of

bringing about social change. And from this changed perspective, American law stood on the verge of what Daniel Boorstin had correctly called one of the great "creative outbursts of modern legal history." - Morton J. Horwitz, *The Transformation of American Law, 1780-1860*.

It should be quite apparent how this theoretical framework of an instrumental law served to legitimize the power of the judiciary. It confirmed what now seems obvious about common law judges, that they create law everytime they pass a sentence, but it also affirmed this and defended why it should be so. This is what legitimized the immense influence of the judiciary on economics, because they believed that it was their role to drive economic growth. This should of course be coupled with the understanding that the federal government did not wish to intervene in economics and facilitate economic redistribution because it would be an affront to the classical liberal principles of the time. But of course, the economy has to be regulated somehow and from the perspective of the federal government, if the judiciary carries out this job, they don't have to take an ideologically self-problematizing responsibility for this. Horwitz (unsurprisingly as a Marxist) views the judiciary of this period as largely using its power to redistribute wealth to the emerging bourgeois elite. This redistribution came about through innovating ideas about property, corporations, monopolies and contracts.

Property

"The productive development of land and natural resources at the beginning of the nineteenth century drew into question many legal doctrines formulated in an agrarian economy. In the eighteenth century, the right to property had been the right to absolute dominion over land, and absolute dominion, it was assumed, conferred on an owner the power to prevent any use of his neighbor's land that conflicted with his own quiet enjoyment. [...] Not until the nineteenth century did it become clear that, because this conception of ownership necessarily circumscribed the rights of others to develop their land, it was, in fact, incompatible with a commitment to absolute dominion. Logical difficulties had been easily concealed by experience, since the prevailing ideal of absolute property rights arose in a society in which a low level

of economic activity made conflicts over land use extremely rare. As the spirit of economic development began to take hold of American society in the early years of the nineteenth century, however, the idea of property underwent a fundamental transformation – from a static agrarian conception entitling an owner to undisturbed enjoyment, to a dynamic, instrumental, and more abstract view of property that emphasized the newly paramount virtues of productive use and development." - Morton J. Horwitz, *The Transformation of American Law, 1780-1860*.

The old conception of property did in no way serve to promote economic growth. Property ideas were explicitly anti-developmental, feudal and centered around an agrarian understanding of the economy and land. The right to absolute dominion over land was, as Horwitz points out, contradictory because it actually stymied the advancement of neighboring property. No one was allowed to develop their land if the neighbor could claim some kind of disturbance and therefore it would necessarily lead to a lack of absolute dominion. Two different theories about property undergirded the legal doctrines at the time. The first was the antidevelopmental theory that use of land was limited to 'natural use', which in this case meant agrarian use. The second was the priority of development, with the maxim "first in time is first in right". It would supposedly seem like the priority of development would allow for more economic development, but as Horwitz points out:

"Before the nineteenth century, however, the theory of priority was harnessed to the common antidevelopmental end. Where two neighboring parcels of land were underdeveloped, each owner could claim a right, based on priority, to prevent further development. Thus, depending on the level of economic development from which one begins to measure priority, the consequences of the theories of natural and prior use may be the same; since the lowest level of development is also the earliest, each party acquires a prior right to the land in its natural state." - Morton J. Horwitz, *The Transformation of American Law, 1780-1860*.

Ultimately, this meant that a complete revision of the notion of property had to occur if technological and economic development was to be facilitated. Still, the priority of use allowed for the first initial steps

towards a pro-developmental understanding of property. If priority of use is understood not on the basis of natural use, but "from the time that a new technology appears", then the rule of priority would give exclusive property rights to the man first to develop. The rule of priority became dominant in the attempt to promote economic growth, and it was used to reward people that took economic risks. This would not last though, because the rule of priority prioritizes certain stages of developments of property and in time this rule started to work against the interests it initially supported. Once "new" property would become challenged by newer forms of property, which would then damage their hegemony:

"Viewed retrospectively, one is tempted to see a Machiavellian hand in this process. How better to develop an economy than initially to provide the first developers with guarantees against future competitive injury? And once development has reached a certain level, can the claims of still greater efficiency through competition be denied? By changing the rules and disguising the changes in the complexities of technical legal doctrine, the facade of economic security can be maintained even as new property is allowed to sweep away the old" - Morton J. Horwitz, *The Transformation of American Law, 1780-1860*.

As Horwitz points out here, judges were literally willing to ping-pong between different theories of property in order to facilitate economic growth with no regards for consistency. This clearly shows the instrumental view of law, where the end justifies the means, and where the judge should not be measured on how closely he can carry out the law, but how he squeezes the law for any use.

In praxis, these changing conceptions of property can be seen in the development of water rights and mills:

"The extensive construction of mills and dams at the end of the eighteenth and beginning of the nineteenth centuries gave rise to the first important legal questions bearing on the relationship of property law to private economic development, and it was here that the antidevelopmental doctrines of the common law first clashed with the spirit of economic improvement. As a result, the evolving law of water rights had a greater impact than any other branch of law on the effort to adapt private law doctrines to the movement for

economic growth." - Morton J. Horwitz, *The Transformation of American Law, 1780-1860*.

Three different styles of legal suits constituted the controversy over water rights. The first was an action by a downstream owner against an upstream owner for diverting the stream or for obstructing the natural flow of water. With dams, a second kind of suit concerned itself with an upstream miller against a downstream miller for throwing water back so to impede the wheels of the upper mill. In the third kind, a landowner would sue a millowner for flooding his land by raising a dam. A long list of cases facilitated the protection of mill owners. The Massachusetts supreme court ruled in *Shoery v. Gorell* (1783) that "without long usage sufficient to confer a prescriptive right, there was no legal basis for preventing a newcomer from obstructing a stream". The New York supreme court held in *Palmer v. Mulligan* (1805) "that an upper riparian landowner could obstruct the flow of water for mill purposes". In *Platt v. Johnson* (1818) the court "held in favour of an upstream mill owner whose dam occasionally detained the flow of water for a number of days".

More importantly though, is the Massachusetts Mill acts in the 1795 statute that made it near impossible to get relief for property damaged by mills:

"The exclusive remedial procedures of the mill acts foreclosed four important alternative avenues to relief. First, they cut off the traditional action for trespass to land, in which a plaintiff was not required to prove actual injury in order to recover. In a mill act proceeding a defendant could escape all liability by showing that, on balance, flooding actually benefited the plaintiff. Second, the statutory damage formula removed the possibility of imposing punitive damages in trespass or nuisance. The common law view had been that unless punitive damages could be imposed, it might pay the wrongdoer to "keep it up forever; and thus one individual will be enabled to take from another his property against his consent, and detain it from him as long as he pleases." A third form of relief at common law allowed an affected landowner to resort to self-help to abate a nuisance. Indeed, there are a number of reported cases in which mill dams not covered by the protection of mill acts were torn down by neighbors

claiming to enforce their common law rights. Finally, the acts foreclosed the possibility of permanently enjoining a mill owner for having created a nuisance." - Morton J. Horwitz, *The Transformation of American Law, 1780-1860*.

This model was slowly adopted by more states and the issues relating to water rights were important in setting the tone for the generally maleable view of property that arose in this period.

Corporations, Competition and Monopolies

The instrumental view of property resulted in a common law that favoured competition. The relationship between state and business enterprise was also altered. When it comes to corporations, one case occupies the center of importance in this period, the so called *Dartmouth College* case (1819). Dartmouth college was granted land as a corporation prior to the revolution, but in 1816 the New Hampshire legislature altered this charter in order to reinstate the deposed president of the college and place appointment under the governor, which effectively turned the school from a private into a public institution.

This case was significant because of its influence on corporate law, ruling that a corporate charter was a contract between a public and a private institution, and that the New Hampshire legislature had no right to interfere in the internal business of the college. This is quite important, because prior to this ruling, a corporate charter was in fact seen as an extension of the public and there was no strong juridical distinction between public and private. Furthermore, it also shows how the court protected corporations against local intervention, thereby strengthening federal authority. While Dartmouth College should not be considered as representative of the mercantile elite emerging at the time, it is of course clear that this would have wide implications for the power of corporations and that the federal judiciary would side with corporate interests against state-level action to further their mutual interests. In this way, *Dartmouth College V. Woodward* is emblematic of this entire period in which this pattern of judicial intervention at the state level to the benefit of corporate interests is a reoccurring theme.

This case was to some extent an inevitability because of the rise of corporations. At the time, many public institutions had resorted to employing "private" corporations to do important public work, like

Massachusetts in 1804 where a corporation was created to lay a street. *Dartmouth College V. Woodward* was in some ways a response to this development and the fact that it was clear that the conception of the corporation as a public body did not hold up. This case solidified the public/private distinction and freed the corporation from public control by giving corporate charters the status of contract. This was crucial for the development of corporations as we know of them today and therefore it occupies a central place in the jurisprudence of this period.

The Dartmouth College case signified the rise of the corporation as a private enterprise independent of the public, while this case stood for an end to the favouritization of individual corporations and a judicial praxis of supporting economic competition between corporations. As Horwitz put it: "Established judicial doctrines concerning exclusive franchises had become fixed just as canals and bridges were beginning to displace turnpikes and ferries on a large scale. Though earlier grants of monopoly privileges may have been necessary in an underdeveloped society in order to promote private investment, the restrictive consequences of these grants were becoming apparent by the second quarter of the nineteenth century." Prior to this decision monopolies had been protected to facilitate economic growth and development of property, but as these monopolies became settled, technological development was threatened and the judiciary resorted to supporting competition instead of monopolies so that new kinds of property and technology were privileged.

Regarding competition, there is another landmark case that defines this period, namely the *Charles River Bridge v. Warren Bridge* (1837). The case itself centered around two bridges in Boston. The Charles River Bridge erected their bridge in 1785 to connect Boston and Charlestown, but in 1827 the Massachusetts legislature authorized the creation of a neighboring bridge, the Warren bridge. Both bridges charged a toll for passage, but only one year after the Warren bridge was built, the Charles River Bridge had lost massive revenues. Charles River Bridge Corporation sued on the grounds that the creation of the rival bridge violated the contracts clause of the constitution stating that a state could not pass a bill impairing the obligation of a contract.

A supreme court 5-2 majority ruled in favour of Warren Bridge, stating that this case centered around the interpretation of contracts, and that this contract should be narrowly construed, which meant that the

Charles River Bridge did not have exclusive or monopolistic rights. In terms of federal expansion this case should be seen as neutral, because the court merely upheld a bill within a state, and did not uphold it against the will of the federal government. More importantly though, this case signifies a turn towards contracts and the privileging of newer kinds of property against old, while also showing how the judiciary would pass through cycles of monopoly grants and monopoly abolishment.

Contract

It should come as no surprise that the development of contract-theory would have massive impact on all economic matters. Contract is essential for all things relating to employment, corporations and the relationship between economic agents. Prior to the instrumentalization of law, the theory of substantive justice was the dominant theory of contract interpretation. Substantive justice meant that the actual substance of the contract was seen as being the center of importance. The validity of a contract was based on the inherent fairness or equity of the contract. This would obviously have restrictive consequences on what one could do with a contract. Because any given notion of substantive justice and equity is vague, it necessarily means that contract arbitration becomes very uncertain.

What had to happen, was a movement towards a will-based theory of contract, where the source of the obligation of a contract was based on the convergence of wills between the contracting parties and not whether the contract was fair or not:

"Beginning with the first English treatise on contract, Powell's *Essay Upon the Law of Contracts and Agreements* (1790), a major feature of contract writing has been its denunciation of equitable conceptions of substantive justice as undermining the "rule of law". "It is absolutely necessary for the advantage of the public at large", Powell wrote, "that the rights of the subject should... depend upon certain and fixed principles of law, and not upon rules and constructions of equity, which when applied..., must be arbitrary and uncertain, depending, in the extent of their application, upon the will and caprice of the judge." The reason why equity "must be arbitrary and uncertain," Powell maintained, was that there could be no

principles of substantive justice. A court of equity, for example, should not be permitted to refuse to enforce an agreement for simple "exorbitancy of price" because "it is the consent of parties alone, that fixes the just price of any thing, without reference to the nature of things themselves, or to their intrinsic value.... Therefore," he concluded, "a man is obliged in conscience to perform a contract which he has entered into, although it be a hard one." The entire conceptual apparatus of modern contract doctrine – rules dealing with offer and acceptance, the evidentiary function of consideration, and especially canons of interpretation – arose to express this will theory of contract." – Morton J Horwitz, *The Transformation of American Law, 1780-1860*

Accompanying this newfound theoretical backdrop, the rise of expectation damages constituted an important change in contract law. Prior to this, a contract was viewed closely in line with property and title theory, whereby a contract is the exchange of titles to property. But with expectation damages, contracts were legally abstracted away from tangible face to face exchange between two men, redefining contract as something that created an expected return. This also meant that "Contract becomes an instrument for protecting against changes in supply and price in a market economy". This will-based conception of contract allowed for employers to make incredibly unfavourable contracts for their workers, like withholding payments for long set terms under working conditions that would make most people leave before the end and therefore leave without payment.

The Court and Sectional Conflict

When one surveys the antebellum period the impression arises that the judiciary didn't engage with the question of slavery and secession until the last minute. The judiciary spent more energy on questions of commerce and economics, while congress was increasingly consumed by the question of slavery and the sectional conflict. Nonetheless, the question of slavery would have to be put before the court in the end, and that is what happened in the infamous *Dredd Scott v. Sanford* (1857) case.

Although seemingly innocuous, the case turned out to pass a judicial verdict on the entire slavery question, legitimizing it and squashing the Missouri Compromise which allowed for Missouri's entrance into the

union as a slavestate on the promise that slavery would be prohibited from expanding north of the 36*30' parallel. The case concerned itself with the slave Dredd Scott who, in 1833, was moved by his owner to the Wisconsin territory where slavery was outlawed due to the Missouri compromise. Because Scott's owner was away most of the time, Scott chose to hire himself out as a worker in this period and tried to save money to buy himself free, but when his owner died and ownership transferred to his wife, he was refused to buy himself free. Scott sued in the state court on the ground that he was legally free because he lived in a free state. Many state and federal court suits later this ended up in the supreme court.

Chief Justice Taney and the supreme court ruled that the court could not entertain this case because Scott was not a citizen, the court had no jurisdiction to ban slavery in the U.S. territories and that the fifth amendment protected the rights of slave owners. The supreme court was staffed with a majority of southerners, who might have thought that they could settle the slavery question in this way, but the case only helped in creating mass outrage in the north and added fuel to the fire of conflict. This case became the center of debate in the years leading up to the secession and was particularly important for Lincoln. Lincoln never hid his disagreement with this ruling and quarrels between him and the court were to be expected as he was elected. The supreme court did try to exert influence on the war effort, but the conflict showed that the court has no power over someone with an army willing to obey them.

As the union army marched into Baltimore, they were met with attacks from southern sympathizers and the situation became bloody as the soldiers defended themselves. In response, Lincoln told the army to take control of Baltimore at all costs and to suspend habeas corpus if necessary. This would be challenged by Chief Justic Taney, after the arrest of John Merryman, on the US circuit court for the district of Maryland. Taney argued that the suspension of the habeas corpus was unconstitutional, stating that this right lay solely with congress and not with the president. Furthermore, Taney issued a writ of habeas corpus for Merryman. The union army in possession of Merryman refused and Taney even went so far as to order the arrest of the military command if they wouldn't turn over Merryman for a fair trial. Naturally, such a thing never happened, and Lincoln responded that he had the right as the executive and commander in chief to suspend the habeas corpus if he deemed it necessary, moreover, he stated that he was not obliged to

obey these orders from Chief justice Taney because he saw them as a threat to his war effort.

There has been some speculation that Lincoln was even planning on arresting Taney for this upfront challenge to his order, but such a thing has never definitively been proved. The ineptitude of the court in this case clearly shows the major weakness of judges. The court was easily made superfluous in a situation where they faced a strong executive that control of enforcement and could safely ignore court orders as a result. The court seems to have got the message that Lincoln was willing to go all the way in this conflict, and in the following cases relating to habeas corpus and the war effort in general, they gave full support to Lincoln.

From Civil War to The New Deal, 1860-1930

The post-civil war period of reconstruction imposed a new political order in the United States. The general pattern of federal expansion via the supreme court stands at 57.9% of all cases during in this period. Interestingly enough, even though the economic category still constitutes the largest set of cases, it actually breaks almost even in its relation to federal expansion and restriction. Whereas, civil rights cases and fed vs. state/state vs. state cases constitute the biggest avenues of federal expansion through the courts. This is obviously explainable by the passage of the new amendments, particularly the 14th, which massively increased the power of the federal government in its ability to overpower the states. The defeat of the south also marked the downfall of the area that had the strongest tradition for anti-federal thought, which naturally allowed for the federal government to impose itself more overtly.

The shift away from economics as being the largest driver of federal expansion during this period is quite interesting though, because the courts didn't suddenly adopt a completely new ideology. But, just like the instrumental view of law was more of an attitude than a coherent system of legal reasoning, so the attitude changed post-civil war. The court continued to empower corporations, but where this praxis was initially something that supervened on the states and expanded federal authority, it was now something that served to protect monopolies and entrench their power. This brings us back to what was said about the cycle of monopoly creation and destruction. With an industrial market economy now well established, a new dogmatic and rigid legal

formalism served to entrench the economic status quo that had created this transition. This protection of the economic status quo and the mercantile elite would inevitably lead to conflict between the judiciary and the state at large as the administrative bureaucracy grew considerably.

Formalism vs. Legal Realism

"For seventy or eighty years after the American Revolution the major direction of common law policy reflected the overthrow of eighteenth century precommercial and antidevelopmental common law values. As political and economic power shifted to merchant and entrepreneurial groups in the postrevolutionary period, they began to forge an alliance with the legal profession to advance their own interests through a transformation of the legal system. By around 1850 that transformation was largely completed. [...] This transformation in American law both aided and ratified a major shift in power in an increasingly market-oriented society. By the middle of the nineteenth century the legal system had been reshaped to the advantage of men of commerce and industry at the expense of farmers, workers, consumers [...] The rise of legal formalism can be fully correlated with the attainment of these substantive legal changes. If a flexible, instrumental conception of law was necessary to promote the transformation of the postrevolutionary American legal system, it was no longer needed once the major beneficiaries of the transformation had obtained the bulk of their objectives. Indeed, once successful, those groups could only benefit if both the recent origins and the foundations in policy and group self-interest of all newly established legal doctrines could be disguised. There were, in short, major advantages in creating an intellectual system which gave common law rules the appearance of being self-contained, apolitical, and inexorable, and which, by making "legal reasoning seem like mathematics,". – Morton J. Horwitz, *The Transformation of American Law, 1780-1860*

"Self-contained, apolitical and inexorable". This should ring a bell, because this kind of view of law was, in praxis, very similar to the old

natural law framework that had been deconstructed with instrumentalism. The specifics of the law were of course quite different, but what it offered for the legal profession was very much the same; a closed system of a supposedly scientific legal inquiry, which creates a veneer of neutrality and objectivity.

Legal Formalism

The formalist jurisprudence that arose in this period is closely tied to the structural interests of the judiciary and its relation to the merchant class, but it is also a result of the increasing professionalization and standardization of disciplines that came into fashion during this period. Formalism served as an epistemic entrenchment of the status quo that had been achieved through the instrumentalization of the common law. Legal formalism was an attempt at creating a general theory of law organized under a unified conceptual architecture.

Because the mythology of "the rule of laws and not of men" has been so defining in American political history, it is clear why legal formalism also created a sharp distinction between law and politics. To have the rule of law, it is not possible for law to be a result of politics, because then it wouldn't be the rule of law at all. Most people would find it quite intuitive that law is connected to politics. We all understand that a more conservative society will usually have more conservative laws and vice versa. But this idea of a scientific law that is neutral and objective has always been a central aspiration for the American legal profession and is necessary if one has to claim the rule of law. Systematic conceptual thinking and a sharp distinction between law and politics is a defining characteristic of legal formalism coupled with an empirical approach to case-studies.

"Through a process of systemization, integration, and abstraction of legal doctrine, they refined and tightened up what had previously been a loosely arranged, ad hoc system of legal classification. To understand late-nineteenth-century legal thought, one must first appreciate the significance of that process of systematization. - Morton J. Horwitz, *The Transformation of American Law, 1870-1960*

An important aspect of this systemization of the common law was the distinction between Public and Private Law. As we saw in the *Dartmouth College Case* (1819), where the public/private distinction

was solidified to protect corporations, this trend was continued and an even sharper distinction arose where a coercive public law ended up constituting everything relating to crime and regulation, whereas, private law concerned itself with tort, contract, property and commercial law, which made private law a safe-haven for capital. This distinction was highly contradictory in nature because public law allowed for massive coercive power for politicians, where private law would not allow for much power to anyone except the judiciary and which, on the surface, reflected the idea of a self-regulating market and its invisible hand. From a structural perspective this protected the current economic monopolies and it only allowed for the judiciary to meddle in commerce affairs while the rest of the state was barred from intervening. This distinction also allowed for a more thorough definition of legal subjects under broad categories:

"Legal thinkers began to call for a more "philosophical" or "scientific" arrangement of the law while heaping scorn on the practical and functional classifications still in vogue. In contract law, the effort centered on attempts to subsume all rules and doctrines under the heading of "will". In tort law, there were various attempts to unite all sub-categories under the heading of duty. But the most prominent efforts at generalization focused on making "negligence" and "fault" the organizing concepts of the law of torts". Consequently, between 1870 and 1900, the architecture of law was once more rearranged, this time around general concepts that submerged the concrete particularity of the previous organizing schemes." – Morton J. Horwitz, *The Transformation of American Law, 1870-1960*

As Horwitz points out here, the scientific arrangement of law created a set of abstract principles from which legal verdicts could be worked out, which would allow for more legal certainty. Of course, this again has a certain reminiscence of the old natural law system, and as pointed out, it allowed for a "neutral" inquiry into law, but the natural law framework was based on first principles and a precedent that was not organized. Formalism was an organized system of precedent not based on moral first principles, but on broad "neutral" categories.

Part of this new system was also the standardization of legal education which happened in this period. An important event in this process was

the introduction of the case method at Harvard Law School by Christopher Columbus Langdell in 1870. The case method was a new method of education in jurisprudence that systematized the common law and created a set of cases to be studied as part of the legal education. This system of cases allowed for an empirical study of the law under their different categories which acted as a new science of the law as it is. This was of course important because it created a standardized legal profession which was now schooled in the same "science" and could apply this in their legal work.

To bring this together with the newly passed amendments, the *Slaughterhouse Cases* (1873) are typical of the way the judges of this period used this legal framework in their continuing goal of protecting monopolies. The case came about when the Louisiana legislature passed a law that granted monopoly to the Crescent City Livestock Landing & Slaughterhouse Company to slaughter animals in New Orleans. The company had to comply with state rules on facilities, prices and output volume. The company should also allow for butchers to work on its ground at a set rate. Some local butchers sued the Louisiana legislature on the grounds that the law violated the privileges and immunities clause of the 14th amendment. They claimed that they had been unconstitutionally deprived of the privilege of operating slaughterhouse companies and thereby from earning a living. The state courts ruled the law constitutional, which made the butchers appeal to the Supreme court. SCOTUS ruled that the law did not violate the Fourteenth Amendment because this amendment only forbids states from withholding privileges and immunities belonging to American citizenship, not state citizenship. The constitution does not require a state to grant special privileges to every one of its own citizens. It is widely agreed today that this reading of the 14th amendment renders the amendment pointless and it is clear that the court had the very clear goal in mind of protecting this new company and its monopoly, even though it happened to the detriment of the preexisting butchers in the area.

While the new legal theory and its standardization was important in creating a coherent legal profession, cases like this slowly unveiled the not so neutral aspect of this formalism. Two cases are of massive importance in the breakdown of the formalist system; *Pollock v. Farmer's Loan & Trust Co.* (1895) and *Lochner v. New York* (1905). These cases are important because they galvanized the progressive movement and

became ammunition for the legal realists and their critique of the formalist legal orthodoxy.

Pollock v. Farmer's Loan & Trust Co. (1895) came before the supreme court to challenge the Income Tax Act of 1894. The constitution allowed for direct taxation by states as well as for the federal government, but the federal government could only impose direct taxation if those taxes could be apportioned proportionally among states in accordance with their representation in Congress. The court held that this tax was unconstitutional because it wasn't apportioned properly among the states and because such a thing was impossible. This also meant that all income tax was delayed until the passage of the Sixteenth Amendment in 1913.

The case was unpopular among progressives because it made social programs impossible for the government, but the case also highlighted issues with the judiciary. The attempt by the judiciary to exert control of economic affairs and avoid direct state and government meddling was in the pre-civil war era also in the interest of the federal government. This was not the case anymore. The court now seemed to be at odds with the federal government and it held on to an old view of the constitution where the government did not have the power of taxation. Where the judiciary had earlier been a close collaborator of the federal government it now entered into conflict with it, which is something that becomes even more apparent with the later New Deal. The federal government simply couldn't afford to carry on the idea of the small state and the divergence of interests between the court and the federal government set up a conflict that the court could not win.

The second case, *Lochner v. New York* (1905), had an ideological character that became important for the progressive critique of classical legal thought. This case came about when the state of New York enacted a statute forbidding more than 60 hours work a week for bakers. The employer, Lochner, was accused of letting his bakers work more than 60 hours and after some appeals this ended up on the supreme court. The court ruled that the New York law was invalid because it interfered with the freedom of contract. Moreover, the court argued that there was no necessity for such a law because the working conditions were not that bad. This last part angered many progressives that believed quite the opposite. To many people this seemed like the court did not care about

the wellbeing of workers and that the court was out of touch with the industrial society that they lived in.

Legal Realism

This progressive critique merged into the legal realist movement. Legal realists certainly had progressive ends, but there is also more to be said about their technical critique of classical legal thought. The realist critique can be summed up in Justice Holmes's maxim "General propositions do not decide concrete cases", which was also formulated by Roscoe Pound as a distinction between "law in books" and "Law in action". The realists did not believe that the broad categories employed in formalist theory were actually fitting when applied to concrete cases. This idea has a vast set of assumptions behind it, the most important of which being the revised role of the judge. The realists wanted to make apparent what judges were actually doing when deciding a case. No matter how much one attempts to portray law as a neutral science applied by judges, one cannot escape the fact that judges do engage in considerations over policy, law cannot be purely objective. This is something the realists wanted to make clear. They did not actually have a problem with this, but they wanted judges to affirm this and use the law to further progressive reforms.

A part of this was also a new conception about what law fundamentally was. Law was seen fundamentally a technique to further certain ends. This may again remind one of the instrumental conception of law that arose in the post-revolutionary generation. It is important to stress that, even though legal realism is often seen as more of an attitude than a coherent movement, legal realism is a complete break with natural law and classical legal thinking (formalism). The instrumental conception of law was still very much within the natural law and common law framework, and the words used were still the same.

Legal realism is a deconstruction of the idea of legal objectivity and an attempt at figuring out and affirming what judges *really* do, despite what they say. If one has to historicize this legal realism we must nonetheless still see the parallels between this line of thinking and the instrumental view of common law. There seems to be a kind of cycle within American legal thought whereby the legal profession erects closed systems that purport to be objective and scientific, whereafter this system is torn down and there is an attempt at affirming the actual power of the judge

in a very overt way, which then loses its purpose and brings us back to the closed "objective" system of jurisprudence. This has been coined the pendulum swing of American legal theory, where the American legal profession will oscillate between realist thought and formalism.

The legal realists contributed a lot to the New Deal progressivism, but they didn't fundamentally alter the structural politics of the court, which, as mentioned, has been documented by Dicho's empirical study of the tendencies of the court.

If we look at what the realists wanted to change apart from the attempt at imposing more progressive social views, the critique of the naturalness of the market was very central. The legal realists responded in some sense to the rise of the bureaucratic state and the realization that there was no such thing as a self-governing market and its invisible hand. This myth was something that the American legal profession had supported since its birth and it was something that it directly enacted in its decisions. With the growth of the central state in the 20th-century it would become apparent that this kind of theory would put the judiciary at odds with the government. In this way we can also read legal realism as an attempt at re-positioning the court politically, so that it could exert its political influence and the same goals under new conditions.

The Realists were inspired by institutional economists, and an important realist thinker in these terms was the economist and lawyer Robert Lee Hale. Hale argued that the market was an organized form of coercion of the weak by the strong and that the market was an interlocking system of power relations not based on voluntariness or meeting of minds. This view of the market coupled with a progressive view of society meant that the realists wanted a new way of interacting with the market. American judges have always exercised great influence on economics and the realists wanted the same, but the realists did not want to do this for the sake of the business class itself. In this way, the realists did not attempt to take away juridical control of economics, they just wanted to do this to different ends by highlighting that the idea that the law should simply reflect the results of a neutral market was wrong. The inspiration taken from economic theory reflected a generally positive attitude towards the social sciences, that the realists wanted to integrate into legal praxis.

The realists were also in many ways inspired by the American pragmatists. This is evident in their critique of objective causation,

which was an important concept when deciding how A led to B in any given case:

"Only if it was possible to say objectively that A caused B's injury would courts be able to take money from A and give damages to B without being charged with redistribution. Without objective causation, a court might be free to choose among a variety of possible defendants in order to vindicate the plaintiff's claim" – Morton J. Horwitz, *The Transformation of American Law, 1870-1960, The crises of legal orthodoxy*

Objective causation was important in formalist theory, but the philosophical attack on that idea by the American pragmatists, which was introduced into legal thought by Justice Oliver Wendell Holmes and later taken up by the realists, meant that objective causal chains were not viable as an explanation. The formalists wanted to uphold this idea because otherwise the causality of events was left to the discretion of the judge, but the realists chose to affirm that this was always the case.

The pragmatist influence on legal thought is also important in the wider philosophical attack on formalist conceptualism:

"Along with his fellow members of the informal Metaphysical Club, Oliver Wendell Holmes, Jr., "had come very early to share their deep distrust and antagonism to the *a priori* categories of Kant and the conceptual dialectic of Hegel. A philosophy of Law, an analysis of legal history, which was built on Kantian or Hegelian foundations must be repudiated and cast aside." – Morton J. Horwitz, *The Transformation of American Law, 1870-1960, The crises of legal orthodoxy*

Justice Holmes was a kind of transitional figure from formalism to realism. Holmes's scepticism of metaphysical thinking was important in the development of realism and the aforementioned idea from Holmes that "general propositions do not decide concrete cases" was the most fundamental philosophical critique of formalism.

The New Deal

Despite the socially progressive current and the Realist critique of classical legal thought, the New Deal still faced huge problems. FDR's attempts at recovering the American economy during the Great

Depression, known as the New Deal, were met with fierce resistance by the Supreme Court. Why this was the case is often portrayed as being the result of the diverging ideologies on the court and especially the strength of the so-called four horsemen who stood for a very conservative jurisprudence. Additionally, Chief justice Hughes, who often had the ability to tip the scales between the liberal wing and the conservative had formerly been a republican presidential candidate. What is more interesting though, is that most of the conservative leaning justices had built their legal careers as lawyers in corporate cases. Many of them had big corporations as clients in their early career and many of their contacts were in those circles. However, these ideological differences do not explain the fact that the liberal judges also in some cases voted with the conservative bloc to strike down New Deal legislation.

The New Deal struggles coincided with the growing strength of legal realism, which was represented on the liberal wing of the court, while classical legal thought (formalism) was embodied by the conservative wing. The New Deal fundamentally challenged the supposedly Laissez-faire status quo that judges had supported for so long through its grant of sweeping powers to the executive and congress to intervene and regulate the economy. As has been demonstrated, the legal profession had been the chief regulator of the economy prior to this, and this is how we must understand the New Deal struggles. The judiciary had to reposition itself against a federal government that was hell-bent on intervening in the economy and the coinciding struggles between formalism and legal realism was the ideological embodiment of this structural repositioning. The judiciary also had to reposition itself against the growing bureaucracy and expertise-groups in government.

Initially the court was somewhat supportive of the New Deal program, but in 1935, the court struck down the National Industrial Recovery Act (NIRA) of 1933, which would be the first of many statutes to be stricken down. NIRA allowed the president to regulate wages and prices in industry, while simultaneously creating the Public Works Administration (PWA) tasked with creating massive public projects bringing people out of unemployment. NIRA came before the court in *A.L.A. Schechter Poultry Corp. V. United States*. The court ruled that section 3 of NIRA was unconstitutional in its delegation of legislative power to the president and that this act was not a valid use of congressional power in relation to the Commerce Clause. The court

laid out a major challenge to the ability of congress and the president to regulate commerce and economics, and it left the National Recovery Administration, which was set up to regulate and facilitate fair competition, in tatters.

The court was rendered highly unpopular because of its resistance to Roosevelt's plans to deal with the depression, who was consequently able to levy the charge against the court that they were only working on behalf of finance and disregarded the wellbeing of the working class. Nonetheless, the court continued striking down minor and major pieces of New Deal legislation, and the next big case was the Agricultural Adjustment Act (AAA). The AAA allowed for the Federal Government to pay farmers directly to not produce crops at a higher amount than that set by the Secretary of Agriculture, thus, the act presented a massive government encroachment on production. In *United States v. Butler*, the Supreme Court held that the act was an unconstitutional exercise of power. The court had squashed Roosevelt's major attempts at control of agriculture, industry and finance and there were serious considerations about what to do with the court.

Privately, the Roosevelt administration discussed the possibility of an constitutional amendment that would remove the ability of the supreme court to rule in economic affairs. These plans were never discussed publicly, but Roosevelt made sure to stir discontent with the court as much as he could. Roosevelt eventually came up with the idea that the number of justices should be expanded from 9 to 15, which would give him ample opportunity to stack the court in his favour. Roosevelt also planned to implement an age limit to Supreme Court which would grant the executive the power to appoint a new justice to the court if a justice above the age of 75 was unwilling to step down. This last part was of course a slight against the court which was staffed by justices very close to this age. Roosevelt might have overstepped himself with the court-packing plan. This was seen by many as an overt political attack on the independence of the court, despite the fact that Roosevelt was right in sensing that the court was unpopular. This proposed legislation was struck down in congress and plummeted the popularity of Roosevelt.

Nonetheless, Roosevelt's threats impacted the court's behaviour significantly as his justification narrative relied upon the court acting as bastion of Laissez-faire dogmatism and so the court realized that they had to moderate themselves to protect their position. During the debacle

about Roosevelt's court packing plan, the court skillfully took control of the situation and started upholding New Deal legislation, removing the impetus to curb the court from most New Deal supporters. This sudden liberal shift was also helped along by the resignation of the conservative justice Van Devanter, which gave Roosevelt the ability to appoint a liberal judge. Chief Justice Hughes who was often the person capable of shifting the court between liberal and conservative majorities now steered the court in a more liberal direction. Hughes was always very concerned with upholding the picture of a unanimous court, and his liberal turn was the way to do this. Nonetheless, everyone marveled at the fact that the court suddenly began upholding New Deal statutes as seen in *West Coast Hotel Co. V. Parrish* where the court upheld minimum wage laws imposed by the federal government or in *NLRB v. Jones and Laughlin Steel Corp*, where the court held that Congress has the right to regulate intrastate economic activities that have a collective impact on commerce.

Roosevelt might have lost a lot in his attempt to curb the court, but in the end he won because his threat against the court and his ability to leverage the popular narrative against the court was enough to force the courts to change direction, and in the end, his New Deal was somewhat successful. The New Deal was in many ways the culmination of the massive expansion of the bureaucratic state, and the attempt at battling this by the supreme court was a fundamentally losing battle.

In the period between the civil war and the New Deal there was a massive expansion of the federal government and its administrative power. The court certainly did not fight this in all the areas that did not pertain to economics directly. As I showed at the outset via *Dichio*, we saw that civil rights and the new amendments played a huge role in this expansion and that the court legitimated this process. But we also saw that the court attempted to restrict federal power over economics. This should be seen as the central mistake of the court in this period. It took the court a long time to adapt to the new bureaucratic state that emerged, and legal realism, was an attempt at reorienting the courts structurally so that they could actually work under this new reality. The Realists tried to re-narrate the institutional position of the judiciary, and they attempted to formulate a new legal epistemology that allowed for more flexibility for the judiciary to reposition itself to the growth of bureaucracy and the social sciences.

The attempt at fighting this new expansion of the state was a losing battle, which is evident in the passing of the Interstate Commerce Commission Act (1887), the Federal Reserve Act (1913), the 16th amendment and of course in the end, Roosevelt succeeded in swinging the supreme court's decisions in his favour and implemented his New Deal program. The judiciary always has to figure out how it can bring contemporary developments inside its legal framework and discourse, this is what is seen in the dualism of formalism and realism. If the courts were to adapt to this, they would now have to figure out how they could regulate the regulators so to speak. Rather than keep the other branches out of economics, the judiciary needed to bring an expanding administrative bureaucracy under their legal framework and submit them to legal review. That is the problem legal thinkers set out to solve in the following period.

Post-New Deal and Contemporary Legal Thought, 1930-2000

This is the period where we enter into our own time and the very familiar disputes over judicial activism and restraint appear. Constitutional issues assume great importance, but it is also a period where the judiciary tries to fit itself into the new administrative bureaucracy. It might be obsolete to mention that this is the period of cases like *Roe v. Wade* and *Brown v. Board*, but these cases have had important implications for the issues concerning judicial activism and restraint. Of all the cases in this period, 62% of them expanded federal authority, with first amendment issues accounting for the largest amount of cases along with civil rights. First amendment cases expanded federal authority 61.2% of the time in this period and civil rights cases 72.6%. An interesting thing to note is also that economic activity again becomes a vehicle for federal expansion with 63.9% of all cases, while Due process cases are seemingly restrictive in nature at 53.8%.

These patterns should come as no surprise when we are aware of the aforementioned cases, and this period is characterized by a massive focus on constitutional issues relating to rights. In part because of WW2 and some of the issues relating to due process, but also the final battering of the South by the federal government. The return to economic activity is also explainable by the unleashing of American capital upon the world in the aftermath of WW2 and the Cold War conflict that ensued. This is a period where America asserted global

dominance and economics was one of the most important avenues for this.

We will first look at the way that the judiciary envisioned its own place in the bureaucratic state.

Administration and Judicial Review

"From its earliest embodiment in the Interstate Commerce Commission (1887), federal administrative regulation had met regular and persistent judicial efforts to confine its scope and limit its powers. The attack on administrative "autocracy" was often simply a stand-in for opposition to or fear of governmental regulation. The form was only incidental. But for others, the rise of the administrative state raised the most basic questions about the meaning and continuing viability of the "rule of law" in situations where unelected officials exercised enormous and unprecedented power to affect the lives and property of citizens" – Morton J. Horwitz, *The Transformation of American Law, 1870-1960, The crises of legal orthodoxy*

The administrative bureaucracy challenged the power of judges and the increasing complexity of economics also meant that judges began to be seen as being unfit to carry out this job as administration relied heavily on expert groups. The judiciary had to figure out how they could continue their influence and that entailed rethinking their own role in the administrative bureaucracy. As Horwitz points out here, there were legitimate concerns about the power of bureaucrats who were not constrained by democratic concerns and these concerns became the avenue for judicial control of the administrative process.

First, we must look at the theory underlying the administrative process at the time, the delegation theory of administrative power:

"When the first institutionalization of the regulatory state, the Interstate Commerce Commission, was established in 1887, separation of powers theory created the framework for conceptualizing administrative action. Administrative officials were classified as part of the executive, whose function was to carry out the commands of the legislature. Under this view, the legislature would decide all questions of

policy and establish clear standards and goals. The essential task of bureaucratic officials was to find the most efficient means to implement clear, legislatively elaborated ends. The court's role was to police this relationship by limiting administrative authority to clear delegations of power from the legislature. The delegation theory reflected the dominance of the German bureaucratic ideal in the late nineteenth century and its twin assumption that (1) general rules can effectively constrain bureaucratic action and (2) the relationship between bureaucratic means and legislatively established ends was essentially a technical or scientific question." – Morton J. Horwitz, *The Transformation of American Law, 1870-1960, The crises of legal orthodoxy*

As we saw in the realist critique, general propositions could not decide concrete cases, and this model could be easily applied to the administrative process. Formal rules designed for a different political context struggled to constrain administrative power. Thus, the delegation theory became a victim of legal realism. This set up a discussion between the "scientific" tradition and the "legalist". The legalists were initially supporters of the delegation theory, but the clear evidence that broad rules could not effectively constrain administrative power cast their fundamental assumptions into doubt. In contrast, the "scientific" tradition supported the idea of an administrative state staffed with "scientifically" trained bureaucrats, who could carry out the will of the executive in a "neutral" way. Nonetheless, such a theory was anathema for the legal profession and the legalists still won out in the end with the passage of the Administrative Procedure Act of 1946. The APA granted federal courts review of all agency actions in the federal government, it governs the way administrators and the federal government can establish regulations, and this still stands to this day. This was a huge victory for the judiciary, for it placed control of the administrative process in their hands.

The debates over expertise groups, bureaucrats trained in various fields, and legal procedure assumes great importance because it touches directly on the structural position of the judiciary, and various groupings within the state. Hence, all debates over expertise and legal procedure must be read in this way.

The issue of expertise groups and legal procedure can also be seen in issues concerning actual court cases in this period. The growth of the social sciences and psychology in the post-New Deal period meant that expert groups started playing an important role in criminal cases. Typically this could be seen in juvenile crime cases, which required "experts such as social workers and criminologists to advise judges on the appropriate individual cure". If one considers a case where the psychological state of the offender is important the judge will obviously have to rely on expert testimony. This leaves a lot of power in the hands of experts, and even though it is intuitively sound that experts should determine this, it challenges the legal process and one cannot ignore that experts are not necessarily neutral, therefore the case *In re Gault* (1967):

"Dominant for half a century, this vision was abruptly rejected by the U.S. Supreme Court in *In re Gault* (1967), which insisted that juveniles be accorded the same procedural protections as adults in criminal proceedings. The decision reflected almost a generation of growing disillusionment with expertise, particularly with the professional claims of social scientists. Without the legitimacy of science, the state's apparatus was no longer experienced as benevolent but once more as potentially oppressive. As claims of professionalism to scientific legitimacy grew weaker, as their ability to provide objective solutions was increasingly called into question, courts reverted to traditional legalist protections against arbitrariness. As the supreme court declared: [...] Procedure is to law what scientific method is to science" – Morton J. Horwitz, *The Transformation of American Law, 1870-1960, The crises of legal orthodoxy*

This rejection of expertise groups is very emblematic of the American judiciary. It typifies the persistent attempt at portraying law as something scientific, which can be neutrally applied. Of course a judge is not trained to evaluate the sanity of someone or evaluate the needs of some juvenile criminal, but all expertise must be subsumed under the legal process itself. Law has to be primary, otherwise the rule of law itself is challenged, or read more profanely, the power of the judge is challenged. If the judge can't subsume everything under his review, he becomes superfluous.

Activism, Procedure and Interpretation

As seen in the debates about the relationship between the rule of law, administration and expert groups fitting into legal procedure, the question of the legal process at large assumes the center of importance in the cold-war period. In a broad sense, the issue of judicial activism and restraint is part of this focus on the legal process. Much of the legal thought in this period is the attempt to understand how to conceptualize the *Brown v. Board of Education* (1954) case, which was a prime example of judicial activism. This activism by the Warren supreme court in this period is even clearer when we realize that the Warren court had the least amount of citations and reference to other cases in the entire history of the court. This activist use of the law was bound to spur some debate, and in a sense, this discussion about whether or not judges should show restraint in their application of the law or use the law actively is still ongoing today, where the debate has transposed into the conservative idea of an originalist interpretation (formalism) and the liberal idea of the living constitution (realism).

Much has been written on why the court took on such an activist role in this period and we hear the usual stuff about the fight against racism and injustice. This shouldn't be of primary interest because structurally far more interesting things could be said about why this took place. Chris Bond's *Nemesis* (2019, *Imperium Press*) has already documented the degree to which the civil rights movement was astroturfed into existence and that the attempt at fighting racial inequality had "a distinctly imperial flavour". Bond argues that the fight for racial justice was a mere pretext for centralizing political authority. *Brown v. Board* extended federal authority over education, and in this way, the court engaged in a pincer-movement leveraging disenfranchised blacks against the states. This is how we must understand the massive focus on rights-issues in this period. The federal government was usurping control over areas previously administered by the states, and rights-issues became the primary vehicle for this end.

Due to the challenges faced by liberal democracies during the mid-20th Century rise of fascism and communism, many (formalist) legal thinkers began to frame democracy as constituting an objective value-free process, threatened by irrational "ideological values". This is why *Brown v. Board* was so controversial, because it ruined the idea of a value-free and scientific legal process through its overt activism. Nonetheless, the

American political elite, and most people today, still think that this decision was valid because it was "just", regardless of whether or not they find it to be objectively lawful.

Naturally, the issue of judicial activism hinges on questions of interpretation. Activist judges will try to make their approach as non-explicit as possible, they will always attempt to present their verdicts as being legally sound and objective. This is why interpretative issues assume such importance in our period, because interpretation conditions the entire legal system. Contemporary legal thought is therefore dominated by theories of interpretation rather than the question of law in itself.

Part 2. Legal Theory and Its Purification; or The Dualism of American Law in Formalism and Realism

The central aspiration of the American legal profession has always been a neutral, objective, scientific jurisprudence. To achieve this, legal reasoning must be purified with formalization. This aspiration arises from the concept of the rule of law, which necessitates a law that is not of men, but of law in itself. This drive must of course be understood through the prism of the political interests of the legal profession. Obviously, the very notion of "scientific" jurisprudence raises the legal process to an exalted position, from which the judge and the jurist can exercise their epistemic centrality. Even though most of American legal history can be characterized as a process of decontextualizing law, this has been periodically punctured by legal realism, which shows us the duality of American law. The drive towards a formalized jurisprudence (championed by conservatives) against an instrumentalized law that can be molded to rationalize the judiciary's pragmatic and moral agendas.

The puritan colonists brought with them a conception of natural law which was somewhat distinct from continental scholastic natural law, due to the primacy of revelation in the Protestant tradition. Nevertheless, the *Imago Dei* still lent credence to the human ability to reason despite our fallen nature. Law for the Puritans was closely tied to theology and philosophy, and so there was no pure notion of specifically legal reasoning. This led many contemporary scholars to the impression that legal education didn't exist in the Puritan colonies, but a clear

method of legal practice was embedded in their education in the humanities. After the revolution jurisprudence came to differentiate itself in the United States, but certain seeds were sown by the puritans prior to this that were important for the development of modern natural law.

American law has never truly shook off the morally absolutist nature of the puritan tradition. Law was for the puritans grounded in Divine commandments, and so, law took on truths which were eternal. This made the question of the role of history on law difficult, because obviously specific laws are historically contingent, but how is that possible when law is an eternal truth? This problem has deeply influenced the constant formalist attempt at purifying law of historicity. The protestantism of the puritans also embedded in American law the notion that the law could in some sense stand on its own, much like the authority of the scriptures themselves, and this of course had huge influence on the development of the idea of "the rule of law".

As the colonies entered the 18th-century the natural law tradition took on a different character. The enlightenment sentiment and the influence of people like John Locke secularized the natural law tradition, and a more positive attitude towards reason emerged. The universal concepts of natural law were no longer derived from a primarily theological foundation but from reason, with empirical methodology deployed not just to determine the facts of the case but to discover the law itself. The puritans privileged revealed law, and this was progressively naturalized by the revolutionary generation. Nature was seen as a supplement to revelation for the puritans, whereas nature became the basis of law in itself for the revolutionaries.

The reception of William Blackstone in America also ended up exerting great influence on the American tradition. The English jurist's writings were aimed at organizing the common law and precedent, and he integrated liberal ideals with the natural law tradition. Blackstone worked with the idea that God has given us laws that we can discover through first principles and reflection upon the nature of humanity. Blackstone was also influenced by Locke's thought, he derived rights from the state of nature and saw the pursuit of happiness as a central first principle. Furthermore, Blackstone stipulated the idea of an indivisible and singular sovereignty, which became popular sovereignty in the American tradition.

Blackstone would have huge influence on the American legal tradition, especially Joseph Story, who represented one of the first attempts at dealing with the question of history in jurisprudence. Story understood that history had to play a part in the development of laws, acknowledging that history played a role in law insofar as laws were the result of the moral reflections of a people through changing circumstances. However, Story maintained that historical contingency could not be allowed to question the eternal truths of the law. These 'eternal truths' preexisted any given law, so law was still something to be discovered rather than created. For Story then, law was a historical process of discovering already existing legal truths, which ultimately meant that law could not be historically founded, it only played itself out in history.

Contemporary with Joseph Story was Jeremy Bentham's attempt at reckoning with the challenge of historicism, and he tried vehemently to show that "a vast gulf separated the analytical from the historical method". Bentham attacked the use of history in law as a politicization of the law and as such, he didn't truly respond to historicist ideas in themselves. Bentham attacked the use of history to justify the political status quo, a problem thought could only be solved with an analytical framework that dismissed these concerns entirely in the pursuit of 'discovery'. The analytical approach to jurisprudence he advocated would lay the groundwork for the rise of legal formalism by the end of the 19th-century.

The distinction between these analytical and historicist traditions tended to blur through time, as even though Story might have thought that he successfully integrated history into his conception of law, he effectively made law itself independent of history because of his assertion of the pre-existence of legal truth. Formalism was a move to an even more pure idea of the law. Influenced by positivism, legal thinkers in the post-civil war era gave their all to create an objective scientific legal system that they could claim to have overcome political contingency in law all together. Throughout the 19th Century the common law had moved towards increasing systematization and the assertion of judicial authority. Formalism was an entrenchment of this result, and this entrenchment had to come from an even more systematized approach to law.

There was a move towards general categories of law that subsumed subjects under general headings, and the introduction of case-studies

by Langdell, was part of this system. Despite his intentions, Story seems to have ended up isolating history from law, and the natural move towards a greater veneer of neutrality came through the rejection of politics as a constitutive element of law. Langdell's case method played an important role in this process. Any science naturally needs an object of study, and Langdell believed that cases were the objects of the legal science. The written opinions of judges was the object, and alongside these cases was the induction of legal principles and doctrines. Langdell wished to entrench legal custom and the common law precedent so that the study of it could become a study of the law in itself. As such, judicial opinions are raised to the status of an scientific object.

Part of this new method of legal studies was also the slow rejection of extra-legal education. Prior to the case-method, legal education had consisted of a more broad philosophical education, but Langdell's case-method helped in making jurisprudence independent of other disciplines. This entire process is what undergirded the separation between law and politics. The formalist vision was one in which law was something that could be neutrally applied to the governance of society regardless of its political situation. This movement towards a more decontextualized law was ruptured by legal realism, but the idea that the law has a neutral application is still strong, and can be seen in the move towards the idea of a value-free legal process in the post-war era.

This puncturing of the formalist paradigm and the drive towards a neutral and scientific jurisprudence is nonetheless important in that it makes evident an inherent dualism of American law. I have mentioned how american legal history oscillates between formalism and realism. Formalism allows for the epistemic entrenchment of the status quo under the guise of "neutral" rationality, creating the illusion of depoliticized law. Realism breaks down paradigms in response to ideological shifts of the political order. Realism then is the way in which the judiciary adapts and repositions itself structurally to maintain its position under political pressure.

Conclusion

The history of American legal theory when read through the prism of the structural interests of the judiciary demonstrates its function. It deploys realism to hold its centrality during politically transformative periods, and then deploys formalism to consolidate these transformations as the

new status quo, raising barriers to "political" intervention in its formal structure. This consolidation holds a new legal paradigm in place, giving the impression that it was always true and not a product of history and politics (this is the true role of the "conservative" in American politics).

Contemporary discussions about the American legal process fit into this duality of American law; its formal conservatism and its real progressivism. We see this in debates on judicial restraint vs. judicial activism, in particular in constitutional law between the living constitution and originalist interpretations. The battles between the executive and the supreme court reveal that the judiciary is dependent upon its ability to portray itself as neutral. Legal power is the power of review. The success of Marshall against Jefferson lies in the fact that his curbing of executive power was largely hidden under the guise of objectivity and legal review. The failure of Justice Taney against Lincoln, and the Hughes court against Roosevelt showed that the court is powerless in the face of an executive empowered to force through an ideological realignment of the status quo. In this way, the court is a priestly institution that can only pronounce passive judgment upon the already established.

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Review of Josh Neal's *American Extremist*

by Adam Katz

I'm going to read Josh Neal's *American Extremist* as fleshing out the Jovenelian model of power Chris Bond explores in his *Nemesis*—Neal himself refers to Bond's book several times and seems to have taken it as a way of structuring his psychological analysis of various contemporary political "types." Getting started on Neal's book by taking it as a supplement to Bond's is helpful because Bond's extremely neutral, impassive dissection of the High-Low vs. the Middle power dynamic that has driven the emergence of the modern liberal order led me, at least, to the following question: yes, I can see the logic of this process, but, still, who *are* these people? Who are these "highs," who so blithely demolish set social orders heedless of the consequences; who are the "lows" who get recruited as social vandals; and, even, who are the "middles," who must find some way to see themselves as bastions of order and propriety by ignoring the fact that they are being perpetually and constantly remade by these whirlpools swirling around them? Reading Neal's book as answering these questions helps to identify the decisive and likely enduring contributions it makes to dissident political thinking.

They are, as Neal argues, "pathocratic spellbinders," whose specialty is in tearing their victims away from what the psychiatrist Andrzej Lobaczewski (upon whom Neal relies heavily in his diagnosis) calls their "congenital instinctive infrastructure," which we can also call "common sense." Something about liberal society, or the modern world, must be

uprooting many if not most of us from our congenital instinctive infrastructure, and it seems to me that for Neal it's an open question whether traditional normative boundaries have broken down due to causes that transcend anyone's intentions or whether the pathocrats have been demolishing those boundaries purposefully and malevolently (something which, in that case, we would have to trace back centuries). (The pathocrats seems to be the most uprooted of all.) Neal also often uses the term "eusocial" as the counter to the pathocracy, without really defining this or saying how we can distinguish the "eu" from the "dys," but maybe that's the point—if we take for granted that there are eusocial desires, institutions, relations, orders, and so on, we have already begun to resist liberal utilitarian relativism and if we proceed in good faith we will come to broad agreements on what counts as "eusocial." Even more, persistently using terms like "eusocial" might have cumulative diagnostic value—who, after all, would want to argue that it is impossible to identify and agree upon the eusocial? Wouldn't repudiating the eusocial be an excellent symptomatic marker of pathocracy—it is a sign that one senses in the very possibility of an agreement surrounding eusociality an obstacle to one's own ambitions and a rebuke to one's own desires—it represents a kernel of resistance to one's ideological operations on others. And, indeed, it might very well be the case that what characterizes the "ideophiles"—those who respond to every utterance with a pre-packaged, polarizing, stereotyped response—is hostility toward the "normal," to the self embedded in traditional, commonsense narratives and communities. The "eusocial" is, in that case, a kind of "transitional object" which might bring those captured by ideological struggles from automated rage over to a critical distancing from all ideologies.

Neal wants us to set aside familiar associations with the word "extremist," which is usually defined against some normalized, consensual "center," so as to see the "center" itself, as currently configured, as "extremist." It is "normal" political discourse, which wages imaginary battles against "capitalism," "communism," "fascism," "Nazism," "racism," etc., and thereby forces everyone into hyper-partisan opposition with others with no tactic—lies, smears, blackmail, vague but urgent and menacing accusations, mindless shaming, and so on—off limits that is "extremist." In fact, nothing is more extremist in contemporary America than the obsessive hunt for extremists, such as those conducted by organizations like the Southern Poverty Law Center and the Anti-Defamation League which have created a lucrative

business model based on hoaxes and infinitely reversible terms (like "defamation," in fact). Neal wants us to oppose to "extremist" the 'radical': "individuals and groups who are outside of the existing order but who seek strategic and eusocial resolutions to the problems of the day" (138). How are such individuals and groups possible, how can they resist the ideological assaults that, as Neal points out, function by expropriating people of the kinds of inherited narratives and norms that provide for social and cultural continuity and social interactions based on trust? How can we know them when we see them—for that matter, how can we know whether we are among them?

For Neal, psychology would have to be up to the task. So, for example, when Neal says that it is important to remember that the extremist often lacks a real ideology or worldview. What he has is sentiment—a sentiment of total rejection and hatred. Extremists are governed by contempt as well: not just for his supposed political enemies, but for those who would work to slow his antisocial and accelerationist aspirations. (142)

I would presumably have to learn to identify such traits in this or that individual or group. How does a "sentiment of total rejection and hatred" *present*? In the "higher functioning" extremists, I would have to be able to notice their inability to "restrain their more tyrannical impulses," and distinguish those, say, from an impatience with lower functioning individuals who interfere with the task at hand (or are they slowing "accelerationist aspirations"?).

I am drawing attention to Neal's thorough reliance on what seems to me an innovative and "radical" reworking of psychological discourses not so as to dismiss or invalidate it, but to advance the claim that what one might see (and Neal himself might see) as a sophisticated, penetrating and accurate *description* of our contemporary social reality (not that I mean to suggest it isn't) is, rather, the *construction* of a language that we would have to learn by translating our discourses into it. I see the construction of such a complex language as an implicit admission that the kinds of inherited, familiar ways of creating and preserving identities within trust-based communities whose obliteration by "spellbinders" and ideologues Neal charts will not be recovered. Which means that the burden of the discourses "radicals" will necessarily invent is to be markedly and discernably different than the "extremist" ideologies that, one might say, take away the language people use to

make sense of themselves, ideologically launder it, and then return it to people as an inimical internal regulatory mechanism. Therapeutic discourse, as Neal knows, has often been complicit in the kind of psychopathic ruling attitudes he diagnoses here; even more, a compelling case has been made, by Philip Rieff, Christopher Lasch and others to the effect that therapeutic discourse has had a demoralizing, anti-traditional, transgressive function in post-war American culture. So, there would have to be something different about this new way of thinking therapeutically.

In a very interesting introductory discussion, Neal makes it clear that he has arrived at the thinking represented in this book from the inside of the right-wing dissident movement. I would like to add a little bit of a more outsider perspective. What I have found fascinating and compelling in "alt-right" and "NRx" discourses is their linguistic, aesthetic and symbolic richness: barbed, futuristic and idealist, cynical and satiric—in short, "parrhesia." Of course there are always policy preferences and more familiar friend/enemy distinctions, but these are always framed within a world of caricatures who are not only to be disagreed with or challenged but "framed," "memed," laughed out of court, judged in terms of imputed sexual potency or lack thereof, etc. So, I place what I am calling Neal's construction of a disciplinary psychological language in this context. One could see Neal's very broad generalizations regarding leftists and conservatives as caricatures, but what is different within a therapeutic discourse is that there must be some way of mediating between the caricature in the individual who can only partially embody it. "NAXALT" is the mocking retort to claims that stereotypes might not cover all of reality, and at times might occlude critical elements of it, but this can't be the retort of the therapist.

Near the end of the book, Neal proposes a dialectic between power and "anti-power":

Political power always produces its own anti-power... As such, any given hegemonic force can no less permanently abolish the extremist or radical tendencies which it generates than it can eliminate itself. Anti-power is at once the political and cultural energy which lies outside of power (and therefore seeks to challenge and usurp it) but is at the same time a latent resource that can be harnessed by power in service of itself (thus becoming an auxiliary to power). We may think of radical politics

as largely belonging to the former, whereas extremism reside almost entirely within the latter category. (405)

And, then, a couple of pages later:

Radical American anti-power is the political force most opposed to neoliberal hegemony, and were it provided the material resources necessary to achieve its goals, would therefore become the strongest and most effective site of resistance against the international pathocracy. But without social proof, material support and, frankly, the right collection of people, it can never progress from anti-power to power. (407)

It's paradoxical to think of progressing from anti-power to power. What constitutes "anti-power" would presumably be a refusal to play the power game—a refrain from the reflexive lining up with one's team against the other team, requiring one draw upon the ready made cliches and insults constantly under production and ready for deployment, along with the somatic "recruitment" of one's entire body for simulated combat. I'm not sure what Neal takes to be the goals of anti-power, but it seems to me they could only emerge clearly as a result of the kind of restraint and abstention anti-power requires. Who are the "right collection of people"? Well, those who are not constantly whistled into action in the latest meme war, protest, or hoax for funding. If anti-power is trying to challenge and usurp power, though, it can't exercise such restraint. I don't recall whether Neal makes use of the concept of "working through" (it's not listed in the index), but wouldn't that be what a properly therapeutic approach would have to entail—allowing those addicted idiophiles to expose and exhaust themselves through the process of "transference" (also not in the index)?

The kind of stance modeled in the book, which I would describe as kind of oscillation between taunting and compassion, seems to be designed for such a prolonged mode of interaction, requiring a great deal of patience. So, a passage like the following seems written to provoke a reaction from the "typical" AER (American Extremist Rightest):

The mark of the AER is an inability to holster his moral pistols. So consumed by his obsession with degeneracy, the AER becomes a caricature of the 19th century gunslinger, always ready to duel—always ready to (socially) die for his cause. He will thrust himself to the absolute margin of society to demonstrate his commitment to anti-degeneracy.

His fixation on degeneracy is telling (as Queen Gertrude said, "the lady doth protest too much, methinks."), for it does not so much expose his objection to degeneracy, but rather its nearness to his heart. Whether he cannot forgive himself for participating in the orgiastic degradation of the American soul, or is in fact determined to clandestinely indulge his perverse revelries, his persistence belies the lustful desire inherent to his foaming-at-the-mouth hatred. (300)

Well, you shrink, what are you doing about degeneracy, how is your psychoanalysis of my moral uprightness and defense of the founding ideals of the American republic any different than those advanced by the left, etc., etc. There's some triggering going on here, in other words. When you claim you know someone better than he knows himself and to possess the vocabulary within which he would have to contest your diagnosis, your next move is a crucial one. You are eliciting a response that will enable you to say "this is exactly what I'm talking about," but also, "and you can see that now yourself, can't you?" Then you have the beginning of a productive dialogue, in which you might end up slipping into the role of the analysand yourself (this must be the case if "eusocial" discourses no longer come naturally but are hard won acquisitions). After all, the analysis is interminable. This is the only anti-power path to power (looking for resources is sure to make you an auxiliary to power): power delivered to those with no desire for it, but willing to exercise it out of love for those who have had their sense of being native to the world torn from them.